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Rights Groups Say Peru’s New Law Protects "Trigger Happy" Police, Military

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Numerous national and international human rights organizations are questioning a new law that gives police and the military more leeway to use lethal force "in the line of duty."

President Ollanta Humala enacted the norm on Jan. 13. Ley 30151 modifies Article 20, Subsection 11, of the Código Penal, which exempted police and members of the armed forces from criminal liability in cases where, "in the line of duty and using their weapons in a prescribed manner, one causes injury or death." The amended version does away with the phrase "in a prescribed manner." And, whereas the previous text contemplated only the use of weapons, the rewrite contains the words "or another means of defense."

The Defensoría del Pueblo, Peru’s autonomous ombud’s office, reacted immediately. In a Jan. 14 press release, it agreed that "law enforcement should be given the tools it needs to tackle organized crime, terrorism, drug trafficking and common crime, as well as address the violence that can result from social conflicts. These various scenarios require differentiated and special procedures." Ley 30151, however, "is not consistent with this objective," the Defensoría insisted. "On the contrary, it puts everyone’s lives at risk by allowing the use of weapons without regard to established policing regulations such as the Manual de Derechos Humanos, which are there to protect people’s fundamental rights."

Three days later, the South America representative for the UN Office of the High Commissioner for Human Rights (OHCHR) Amerigo Incalcaterra also spoke out against the new law. The Santiago, Chile-based official said Peru has the obligation to adapt its legislation to international standards regarding the use of force and firearms by law-enforcement personnel. The penal code amendment does the opposite, said Incalcaterra. "It departs from international human rights standards which require law-enforcement officials, when exercising force, to try to avoid causing unnecessary and disproportionate harm," he said. "This amendment could allow human rights violations to go unpunished. Every complaint regarding the excessive use of force should be investigated in an effective, prompt, and impartial way."

Speaking to reporters, Peru’s Interior Minister Walter Albán said that, in his opinion, the amendment was neither necessary nor appropriate. But just because it was enacted doesn’t mean "we can ignore the Constitution and the laws that were put in place to prevent impunity." Albán, a former ombud (2000-2005), emphasized that the law should not be considered a license to kill. "We shouldn’t add to the misconception that this is some type of blank check," he said.

Fearing impunity

Yet, when it comes to investigating cases involving the excessive use of force by police or military, Ley 30151 really could act as an impediment, according to the Fundación Ecuménica para el Desarrollo y la Paz (FEDEPAZ), a Lima-based rights group. The organization warned in a Jan. 21
press release that law-enforcement officials can now justify any injuries or deaths they cause simply by saying the incident in question "occurred while in the line of duty."

Amnesty International (AI) believes the Peruvian state "should send a clear message that law enforcement does not have carte blanche and that human rights violations will not be tolerated." In a statement issued Jan. 17, the organization insisted that "no one is above the law. Allegations regarding human rights violations committed by the police and military must be duly investigated and, assuming there is enough admissible evidence, the people responsible must be prosecuted."

In the past two-and-a-half years, 34 four people died and 950 people were injured as a result of social conflicts, according to data compiled by the Defensoría del Pueblo. Roughly one-third of those injured were police. A handful of soldiers have also been hurt. Between 2006 and 2013, 193 civilians died in social conflicts.

Rights groups worry that, with the new law in place, such killings could become even more commonplace. FEDEPAZ warns that all a soldier or police officer will need to do to avoid responsibility is say he or she was acting "in the line of duty." After that, it won’t even be possible to investigate the matter to determine if crimes were committed that went above and beyond that so-called duty.

Last May, in Echarate in the department of Cusco, soldiers opened fired on a vehicle carrying civilian passengers, 11 of whom sustained serious injuries. The soldiers, claiming they had information that the vehicle was carrying terrorists, said they were acting in the line of duty. Authorities, nevertheless, carried out an exhaustive investigation, allowing them to eventually challenge the soldiers’ claims. That was before Ley 30151 went into effect. The next time, according to FEDEPAZ, there isn't likely to be such an investigation.

"What makes this even worse is that it’s taking place at time when government policy is to criminalize social protest," said FEDEPAZ (NotiSur, Dec. 20, 2013). "Instead of trying to meet the just demands of large sectors of the population, which are asking that their fundamental rights be respected, the state is using criminal law to pursue them and using indiscriminate and irrational force to quiet their protests. The latest manifestation of all this was the approval of [Ley 30151], which exempts the agents of this arbitrary repression from any liability."

Juan José Quispe of the Instituto de Defensa Legal (IDL) worries in particular that the amendment could end up benefiting police officers implicated in a pair of deadly 2009 clashes in Bagua province, in Peru’s Amazon region. Dozens of people died in the confrontations, which involved security forces on the one side and Awajún Indians on the other (NotiSur, July 24, 2009). The lawyer told the daily La República that police officers implicated in the massacres could invoke the new norm retroactively by applying something called the "more-lenient law" principle. The rule, as established in Article 6 of the Código Penal, allows people involved in past crimes to benefit from any eventual changes to the law that might lessen the seriousness of the original transgression.

The Washington, DC-based Inter-American Commission on Human Rights (IACHR) also raised concerns about the new legislation, which it described in a Jan. 23 press release as a "regression" in terms of human rights and as far as Peru’s overall citizen-security policy is concerned. "Consequently, the Inter-American Commission calls on the Peruvian State to urgently modify its legal and administrative standards, as well as the operational plans and procedures of the institutions responsible for citizen security, in order to strengthen its capacity to prevent, investigate,
and punish human rights violations resulting from any unlawful or excessive use of force by act or omission of State agents," the document read.

**Insisting on a repeal**

Human rights organizations, along with various institutions and public figures, are demanding that Congress repeal Ley 30151. The Asociación Pro Derechos Humanos (APRODEH) believes the judiciary and executive branches of government need to act as well. The organization is urging the courts to keep using constitutional mechanisms that are in place to protect citizens from abuse at the hands of police or military. The Humala administration, in the meantime, ought to change course in how it deals with social conflict, APRODEH insists. Rather than criminalize public protest, it should focus on dialogue, protect people’s rights, and encourage citizen participation.

Arguing along similar lines, the collective Red Muqui—which promotes sustainable development and works to defend the rights of communities threatened by large mining projects—is urging the government not only to overturn Ley 30151 but to advance new legislation aimed at clarifying what exactly law enforcement can and cannot do when it comes to domestic policing. Peruvian authorities need to make sure those regulations "meet international standards regarding the use of force," Red Muqui explained in a Jan. 18 press release. The group also thinks police involved in crowd-control operations should be re-equipped—with better protective gear but without lethal weapons—and receive ongoing training regarding how to manage social conflicts.

The Defensoría del Pueblo insists that the key to strengthening police and military work overall is to focus on professionalism. The state needs to provide permanent and specialized training, appropriate equipment, fair salaries, and, should it be necessary, effective legal defense that guarantees that any soldier or police officer who acted legitimately in the line of duty be protected and not subjected to unjustified punishment.

The OHCHR's Incalcaterra also emphasized the importance of having clear rules in place. "Strict regulations regarding the use of firearms are fundamental for guaranteeing and protecting the actions of law enforcement," he said. "They are even more important for guaranteeing and protecting the rights of ordinary citizens."

The Coordinadora Nacional de Derechos Humanos (CNDH), an umbrella group representing 81 organizations, described the law as a sensationalist measure that is completely ineffective when it comes to public security. "To deal with this problem, we call on the legislature and the president’s office to organize a committee tasked with developing a norm that precisely regulates riot control operating procedures," the CNDH urged. "[The government] must also repeal any norms that relax controls regarding the use of lethal force. The committee must include people who are specialized in public security and human rights."

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