PERU

CAT Article 20 Examinations Re: Systematic Torture

CAT, A/55/44 (2000)

V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

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B. Inquiry on Peru

219. On 17 November 1999, the Committee decided to include in its annual report the information appearing below.

220. At its fourteenth session, in April 1995, the Committee examined in closed session information on allegations of systematic practice of torture in Peru which had been communicated to it by non-governmental organizations, pursuant to article 20 of the Convention.

221. The Committee considered that the information appeared to be reliable and that it contained well-founded indications that torture was being systematically practised in Peru. The Committee invited the State party to cooperate in the examination of the information and subsequently in the confidential inquiry that it had decided to establish. The Committee is satisfied with the manner in which Peru cooperated throughout the procedure.

222. The Committee designated for the inquiry two of its members. With the agreement of the Government of Peru, the two Committee members visited Peru from 29 August to 13 September 1998.

223. The Committee completed its inquiry in May 1999 and transmitted its report with conclusions and recommendations to the Government of Peru on 26 May 1999.

224. In November 1999, the Committee decided to postpone any decision about the publication of its summary account of the inquiry.

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V. ACTIVITIES OF THE COMMITTEE UNDER ARTICLE 20 OF THE CONVENTION

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B. Summary account of the results of the proceedings concerning the inquiry on Peru

Introduction

144. Peru ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 7 July 1988. At the time of ratification it did not declare that it did not recognize the competence of the Committee provided for in article 20 of the Convention. The possibility of making such a reservation is provided for by article 28, paragraph 1, of the Convention. The procedure under article 20 is therefore applicable to Peru.

145. The application to Peru of the confidential procedure provided for in article 20, paragraphs 1-4, of the Convention began in April 1995 and ended in May 1999. In accordance with article 20, paragraph 5, of the Convention, the Committee, after holding consultations with the State party concerned on 15 November 1999, decided, on 16 May 2001, during its twenty-sixth session, to include in the annual report it is to submit to the General Assembly in 2001 the following summary of the results of the inquiry on Peru. The decision was taken unanimously.

Development of the procedure

146. In April 1995, the Committee considered in closed session information on complaints of the systematic practice of torture in Peru which had been communicated to it, pursuant to article 20 of the Convention, by Human Rights Watch, a non-governmental organization. It recalled that, in the conclusions and recommendations it had adopted on 9 November 1994 at the end of its consideration of the initial report of Peru, it had stated: "One cause for serious concern is the large number of complaints from both non-governmental organizations and international agencies or commissions indicating that torture is being used extensively in connection with the investigation of acts of terrorism and that those responsible are going unpunished." The Committee instructed one of its members, Mr. Ricardo Gil Lavedra, to analyse the information and to propose further action.

147. In August 1995, the Coordinadora Nacional de Derechos Humanos, a Peruvian non-governmental body comprising some 60 non-governmental organizations, also sent the Committee complaints about systematic torture in that State party.

148. In November 1995, the Committee decided to request the Government of Peru to give its own view on the reliability of the information received.

149. In May 1996, the Committee instructed another of its members, Mr. Alejandro González Poblete (Mr. Gil Lavedra had not been re-elected as a Committee member), to determine, on the basis of the information received from the above-mentioned non-governmental sources and the Government's observations, whether it should continue to apply the procedure provided for under article 20 of the Convention.

150. In November 1996, the Committee concluded that the information received was reliable and contained well-founded indications that torture, as defined in article 1 of the Convention, was being systematically practised in Peru. It therefore invited the State party to submit its observations on the substance of the information received.

151. In May 1997, the Committee requested the Government also to submit its observations on new complaints of torture which had been brought to its attention by Human Rights Watch and the Coordinadora Nacional de Derechos Humanos in recent months. Two Committee members, Mr. González Poblete and Mr. Bent Sørensen, agreed to follow the development of the procedure.

152. The Government of Peru subsequently submitted its observations and requested a private meeting between its representatives and Mr. González Poblete and Mr. Sørensen. The meeting was held in the United Nations Office at Geneva on 6 November 1997.

153. On 20 November 1997, during its nineteenth session, the Committee decided to conduct a confidential inquiry, designated Mr. González Poblete and Mr. Sørensen for that purpose, invited the Peruvian Government to cooperate in the inquiry and requested it to agree to a visit to Peru by the designated Committee members. The visit was agreed to and took place from 31 August to 13 September 1998. In the meantime, the Committee continued to transmit to the Government summaries of complaints received, including individual cases, and to request information on them. Between 1996 and 1998, the Committee transmitted a total of 517 cases alleged to have occurred in the period between August 1988 and December 1997.

154. The Committee members making the inquiry submitted an oral report to the Committee in November 1998 and a written report in May 1999. Also in May 1999, the Committee decided to endorse the report and transmit it to the State party. This was done on 26 May 1999.

155. In November 1999, the Committee considered the Government's response to the conclusions and recommendations contained in the report and, on 15 November 1999, it consulted representatives of the Government concerning the possibility of including a summary account of the results of the inquiry in the Committee's annual report, as required by article 20, paragraph 5, of the Convention. The Committee nevertheless decided to postpone the adoption of a decision on this matter and to request the State party to provide additional information on the implementation of the Committee's recommendations before 1 September 2000. Lastly, the Committee decided to mention in the annual report it was to submit to the General Assembly in 2000 that it had conducted an inquiry under article 20 of the Convention in connection with Peru.

156. The State party sent the Committee the information requested on 1 September and 16 October 2000, and sent additional information on 21 December 2000 and 7 February 2001.

Conclusions contained in the report of the Committee members who made the inquiry

157. As indicated above, the Committee members who made the inquiry submitted their written report in May 1999. The report contains the conclusions set out in detail below.

Complaints received during the inquiry

Observations

158. The Committee received extensive information from non-governmental organizations during the inquiry, basically concerning cases of persons with whom it had had some form of contact and who claimed to have been victims of torture. A large number of such cases involved persons who had been arrested in the context of activities by the security forces against armed insurgent groups, and a number of others concerned persons arrested in the course of investigations of ordinary offences. People in the former group claimed that they had been tortured by members of the anti-terrorist branch of the National Police or by the army, while those in the latter group blamed police officers. In both cases the goal was basically to obtain information that might be of use in the police investigation.

159. Their visit to the country enabled the Committee members to delve further into the subject of their inquiry. They talked with representatives of non-governmental organizations, lawyers, judges and prosecutors, who agreed that torture was widespread and referred to new cases or elaborated on cases with which the Committee was already familiar but which stood out because of their impact on public opinion or their value as indicators of the extent and characteristics of torture. The Committee members were also able to compare that information with oral testimony received from people who were in detention at the time or had been detained in the past. Some of the people with whom the Committee members spoke were contacted through non-governmental organizations, while some of those in detention were selected at random. Many of the persons interviewed who claimed to have been tortured were examined by the doctors taking part in the mission, who concluded, in the great majority of cases, that the allegations were consistent with the presence or absence of physical signs of torture. The Ombudsman and his staff expressed their concern at the practice of torture in Peru to the Committee members.

160. On the basis of the information thus obtained, the Committee members noted that the number of cases had decreased in 1997-1998. The above-mentioned sources confirmed that decrease, which was linked to the decrease in the number of persons detained in the context of activities against subversive groups, due in turn to the significant decrease in the activities of such groups. Decrease does not mean disappearance, however, since the Committee has continued to receive information about cases allegedly occurring in 1997-1998. The Committee members also noted, on the basis of the

information received, that torture of persons detained in the course of investigations of ordinary offences was a problem that some sources described as endemic, although its particular features had not earned it the same attention as the torture of persons accused of terrorism.

161. The Committee members were able to compare the information thus received with information provided by the Government. The latter information was provided in both written and oral form. The written information consisted basically of replies concerning individual cases communicated by the Committee. The Committee members noted that, according to those replies, those responsible had been punished in some cases, but virtually only when the victim had died. Punishment, moreover, was too mild in comparison with the offence. The Committee members noted that in a large number of cases the Government provided no information or stated that there was no information on file with the competent authorities. Also in a large number of cases, the Government provided background information on the detention and trial of the alleged victim but made no reference to the allegations of torture.

162. The Committee members were able to talk with government officials before and during their visit to the country. Those officials stated that when anti-insurgent activities had been at their height some abuses had been committed, but such abuses had been the exception, punishment had been imposed and measures had been taken to ensure that they did not recur.

Conclusions

163. In the opinion of the Committee members, the large number of complaints of torture, which have not been refuted by the information provided by the authorities, and the similarity of the cases, in particular the circumstances under which persons are subjected to torture and its objectives and methods, indicate that torture is not an occasional occurrence but has been systematically used as a method of investigation. In this regard, the members of the Committee recall the views expressed by the Committee in November 1993 on the main factors that indicate that torture is systematically practised in a State party. These views are as follows:

“The Committee considers that torture is practised systematically when it is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be habitual, widespread and deliberate in at least a considerable part of the territory of the country in question. Torture may in fact be of a systematic character without resulting from the direct intention of a Government. It may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration. Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of this practice.”

Legal issues

Observations

164. The Committee members noted that, despite the existence of constitutional provisions protecting them, the rights of detained persons have been undermined by the anti-terrorist legislation, most of which was adopted in 1992 and is still in force, and which makes detainees particularly vulnerable to torture. At the same time, the rights of persons detained for ordinary crimes have also been undermined under the legislation adopted in 1998 on a series of particularly serious offences. Aspects such as the extension of the armed forces' powers of detention, the length of pre-trial detention, incommunicado detention in police custody, the weakening of the role of the Public Prosecutor's Office in conducting police investigations and ensuring respect for the rights of detainees, the probative value given to police reports, the limitations on the habeas corpus procedure and on legal assistance to detainees, and the poor medical follow-up of persons detained are matters of particular concern to the Committee members and should be the subject of corrective legislation. The existence of the 1998 legislation leads the Committee members to conclude that torture has been occurring with the authorities' acquiescence. The Committee members also noted the high degree of impunity enjoyed by those responsible for acts of torture, impunity which was significantly incorporated into the 1995 amnesty legislation.

Conclusions

165. In the Committee members' opinion, it will not be possible to eradicate torture in Peru without radical changes in this area. Although the adoption in 1998 of legislation defining the offence of torture and clearly establishing jurisdictional rules is a positive step, past cases must not go unpunished. Furthermore, criminal aspects are not the only ones that must be given attention. It is also imperative to take legislative measures for reparation and compensation of the victims.

166. In the Committee members' opinion, the legislation in force contains a series of weaknesses which hinder the practical implementation of the obligations established by the Convention, as it provides little protection against torture under criminal law, impedes the investigation of complaints and fosters impunity for the guilty, all of which is attested by the small number of judicial investigations of cases of torture and the even smaller number of government employees who have been punished.

167. With regard to the time limits for pre-trial detention, although the Constitution authorizes the extension of the time limit by decision of the police authorities in cases of terrorism, espionage and illicit drug trafficking, there should be a government decision limiting that authority to the point where the time limit provided for in article 2, paragraph 24 (j), of the Constitution is re-established for all offences. The limitation of the duration of incommunicado detention provided for in article 133 of the Code of Penal Procedure should also be fully enforced for all types of offences.

168. Medical examinations of all detainees, whichever authority has effected the detention, should be made mandatory. The Government should provide the human and material resources to ensure that this is done. The initial examination should take place within 24 hours of the time of detention and further examinations should be performed whenever the prisoner is transferred and on release.

169. Similarly, judges should order an immediate prior examination of detainees as soon as the latter are brought before them. When making their first statement, detainees should be explicitly asked whether they have been subjected to torture or other cruel, inhuman or degrading treatment. Failure to ask should invalidate the accused's statement. Similarly, any physician examining a person detained or being released should question him or her specifically about torture, take the answer into account in conducting the medical examination, and include both the question and answer in the medical report.

170. Any provision that is in contradiction with the constitutionally-vested power of the Public Prosecutor's Office to investigate any offence from the outset should be repealed and substantial penalties should be established for any interference with the exercise of this power. To that end, the Government should grant the Public Prosecutor's Office the human and material resources needed to exercise this power effectively throughout the country.

171. The public defender service should be given the legal powers and human and material resources necessary for ensuring that every detainee is able to avail himself of it from the time pre-trial detention is ordered.

172. Every judge, on learning from the accused's statement that the accused has been subjected to torture in an effort to force him or her to corroborate the police report, without prejudice to the ordering of a medical examination, should immediately order the statement referred to the Public Prosecutor's Office for investigation of the complaint. If the grounds for the complaint are substantiated, criminal proceedings against those responsible should be conducted as part of the same proceedings, and the judgement must take into account the complaint based on the allegation of torture as well as the complaint against the accused. To that end, the provisions prohibiting police officers who have helped in the preparation of self-incriminating statements from being called on to testify should be repealed.

173. All legal provisions or rules of inferior rank which limit the competence of criminal court judges to hear applications for habeas corpus should be repealed. In particular, any provision which vests judges outside the ordinary justice system with competence to hear applications for habeas corpus should be repealed.

174. Legislation should be enacted to the effect that, in cases which might involve any of the offences against humanity referred to in Title XIV-A of the Penal Code, an inquiry shall be opened even when the alleged perpetrator(s) have not been individually identified. Legislation should also be enacted stipulating that, where such offences are concerned, criminal proceedings and sentencing shall not be time-barred and the granting of amnesty

or pardon shall be inadmissible.

175. Lastly, the trend towards the expansion of the jurisdiction of military courts, intensified with the promulgation of Legislative Decree No. 895 of 24 May 1998, should be reversed; the jurisdiction of such courts should be strictly limited to offences of official misconduct.

Places of detention visited

Ministry of the Interior facilities

Observations

176. The Committee members making the inquiry found unsatisfactory conditions of detention, particularly in the cells of the following places of detention:

(a) National Anti-Terrorism Department (DINCOTE), Lima;

(b) Criminal Investigation Division (DIVINCRI), Lima;

(c) Criminal Investigation Division, Chiclayo;

(d) Cells adjacent to the Courthouse, Chiclayo.

177. They noted from the registers of those facilities and during interviews with inmates that arrested persons may be detained there for periods of up to 35 days. They also noted that, in certain cases, persons under interrogation by DINCOTE were forced to spend the night in the interrogation rooms lying on the floor and handcuffed.

Conclusions

178. The Committee members are of the view that a long period of detention in the cells of the detention places referred to above, i.e. two weeks, amounts to inhuman and degrading treatment. Longer periods of detention in those cells amount to torture. Moreover, the practice of forcing persons under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor also amounts to torture.

179. The Peruvian authorities should take measures to:

(a) Improve in particular the hygienic conditions of detention;

(b) Ensure that periods of detention are in strict conformity with the limits established by law; and

(c) Prohibit the practice of forcing detainees under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor.

Ministry of Justice facilities

180. The members of the Committee conducting the investigation visited the Castro Castro, Lurigancho and Santa Monica prisons in Lima. In Chiclayo they visited the Pisci prison, including sections for women and for persons convicted of terrorism .

Observations

181. The Committee members conducting the investigation noted great overcrowding in almost all prisons, which inevitably leads to hygiene problems. In certain cases, the problems are aggravated by the lack of running water. The Committee members did not receive any complaint of torture in the prisons. Although certain punishments amounting to torture at the instigation of the former governor of Lurigancho prison were reported to them, they noted that the new governor was energetically pursuing a new policy of eradicating brutal practices by the prison guards. Furthermore, none of the many cases of torture submitted by non-governmental organizations or reported during interviews related to premises under the jurisdiction of the Ministry of Justice.

182. The Committee members noted the excessive rigour of the maximum-security regimes, one feature of which is that they are applied as soon as a person enters prison; in other words, they are applied to both tried and untried prisoners. At their most stringent, these regimes involve constant confinement in the cell with only one hour in the yard a day for an initial period of one year, renewable every six months.[*]

Conclusions

183. The Committee members are of the view that, generally speaking, although Ministry of Justice detention facilities raise problems in relation to other international human rights instruments (overcrowding, hygiene, etc.), they seem to pose no problems in connection with the implementation of article 20 of the Convention. However, the Committee members are deeply concerned about the deplorable detention conditions (no electricity, no drinking water, temperatures of minus 10° or 15° C without heating, etc.) of the maximum security prisons at Challapalca and Yanamayo, in the south of Peru, which were reported to them by non-governmental organizations and, in particular, by detainees who had been transferred to those prisons for a month or more as a form of disciplinary sanction. It appears that the deplorable conditions of detention are further aggravated by health problems caused by the fact that Challapalca and Yanamayo prisons are situated in the Andes at a height of more than 4,500 metres above sea level. The Committee members are of the view that detention conditions in Challapalca and Yanamayo, as reported to them, amount to cruel and inhuman treatment and punishment. In this connection, they fully support the initiative taken by the Ombudsman's Office in June 1997 to recommend to the Directorate of the National Penitentiary Institute not to transfer prisoners or prison personnel to Challapalca.

184. The Committee members are of the view that, generally speaking, the Peruvian authorities should redouble their efforts to solve the problem of prison overcrowding and

improve conditions of hygiene. Specifically, the Peruvian authorities should close Challapalca and Yanamayo prisons.

Ministry of Defence facilities

Observations

185. The Committee members making the inquiry visited the maximum security detention centre at the El Callao naval base, where there were seven prisoners, six of whom were prominent leaders of the subversive movements Sendero Luminoso and Movimiento Revolucionario Túpac Amaru. They were serving sentences of between 30 years and life imprisonment in complete solitary confinement. The regime to which they are subjected is very strict but respects their basic needs, except for deprivation of sound and communication. They are not allowed to talk among themselves or with the prison guards, and the cells are totally soundproofed against outside noise. They have the right to go outside, albeit alone, to a small yard surrounded by high walls for a maximum of one hour a day. They are allowed visits by close family members for half an hour once a month, but there is no physical contact.

[*] In this connection, the Committee takes note of the information provided by the Government on 22 September 1999 relating to the doubling (to two hours) of the time during which prisoners subject to the special maximum-security and special medium-security regimes are allowed out into the yard.

Conclusions

186. The Committee members are of the view that sensorial deprivation and the almost total prohibition of communication cause persistent and unjustified suffering which amounts to torture. The Peruvian authorities should put an end to this situation.

Cooperation by the Peruvian authorities in the inquiry

Observations

187. The Committee members making the inquiry wish to recall that the Committee began its consideration of the reports of complaints about the systematic use of torture in Peru in April 1995 and completed consideration in May 1999. During this period, the Peruvian authorities always responded positively to the Committee's invitations to cooperate in the inquiry that was decided on 22 November 1996 and acceded to its request to allow a visit to Peru.

Conclusions

188. The Committee members making the inquiry take note with satisfaction of the excellent cooperation extended by the Peruvian authorities during the inquiry, in conformity

with the provisions of article 20, paragraph 3, of the Convention, and wish to thank them.

CONCLUDING OBSERVATIONS

189. The Committee notes that, in the observations sent to it on 22 September 1999 concerning the inquiry report, the State party expressed its disagreement with the Committee's conclusion concerning the existence of systematic torture in Peru and repeated that torture was not a tolerated practice there. The State party rejected the suggestion that the anti-terrorist legislation constituted per se a valid ground for the Committee's conclusion that torture had occurred with the acquiescence of the authorities. It stated that, prior to the entry into force of the law characterizing the offence of torture, the existing legislation had in fact permitted the punishment of acts of torture; that it was not necessary to adopt legislative measures that would permit redress and compensation for torture victims since such legislation already existed; that both the Constitution and the Supreme Court's case law established the obligatory nature of the medical examination of detainees before they went before the courts; that the constitutional powers of the Public Prosecutor's Office with regard to the investigation of offences had not been curtailed; that by the Act of 23 December 1998 the public defender system had been restructured; that the investigation and punishment of torture cases as part of the same proceedings as those in which the cases were detected would not be practicable; that there were no constitutional provisions banning testimony by police officers who had contributed to the preparation of self-incriminating statements; that it was not practicable to legislate for a judicial examination when the perpetrator of the acts of torture had not been individually identified; and that, by a decree of 18 February 1999, the Regulations relating to the Regime and Progressive Treatment for Prisoners Accused and Convicted of Terrorism or Treason had been amended, adding one hour to the yard time allowed prisoners subject to the special maximum-security or special medium-security regimes.

190. In subsequent communications, the State party reported that various types of political, administrative and legislative action which, in general, conformed to the Committee's recommendations were being undertaken. He mentioned the following in particular:

(a) Establishment of a Presidential Commission for the Strengthening of the Democratic Institutions;

(b) Modification of Legislative Decree No. 895: the investigation and trial of the offence of special terrorism were now within the competence of the ordinary courts, and habeas corpus proceedings relating to such offences would be brought in accordance with the general legislation on the subject;

(c) Adoption of two decisions by the Supreme Court of Justice to the effect that crimes against humanity, including torture, were within the competence of the ordinary courts and must be dealt with in accordance with the ordinary procedure;

(d) Formulation of a plan to terminate, within a period of two years, the practice of

appointing provisional judges and prosecutors;

(e) Termination of the state of emergency in practically all areas of the country;

(f) Opening of two new prison facilities and the granting of over 1,500 pardons and reprieves, which had helped to reduce the prison population and improve conditions for prisoners;

(g) Establishment, within the Ombudsman's Office, of a Team for the Protection of Human Rights in Police Stations, with responsibility for verifying the situation of detainees;

(h) Establishment of a Single Register of Complaints for crimes against humanity, to be compiled by the Public Prosecutor's Office;

(i) Inclusion in the "Forensic Procedures" of the "Forensic examination procedures for the detection of injuries or death resulting from torture";

(j) Intensification of training activities on subjects relating to human rights within the National Police.

191. The Committee has continued to receive disturbing information from non-governmental organizations about cases of torture which occurred after the visit to Peru by two of its members.

192. The Committee takes note with particular interest of the statement made by Mr. Diego García Sayán, Minister of Justice of Peru, on 27 March 2001 at the fifty-seventh session of the United Nations Commission on Human Rights. He stated that, in the four months during which the transitional Government of Mr. Valentín Paniagua had held office following the resignation of President Alberto Fujimori, intensive efforts had been made to provide effective tools for the protection of human rights. In particular, the Government was taking the necessary steps to establish a truth commission which would clarify the violations of human rights, including torture, that had occurred in Peru between 1980 and 2000, and to formulate a policy of redress for the victims.

193. The Committee expresses the hope that the Government of Peru which is to take office in July 2001 will take energetic and effective steps to rapidly end the practice of torture, in accordance with the provisions of the Convention.

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CHAPTER V. ACTIVITIES OF THE COMMITTEE UNDERARTICLE 20 OF THE CONVENTION

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54. During the thirty-sixth session, the Committee had before it the fourth periodic report from Peru, under article 19. The Committee examined the status its recommendations under article 20 (A/56/44, paras. 144-193).

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