

PERU

CAT A/50/44 (1995)

62. The Committee considered the initial report of Peru (CAT/C/7/Add.16), which should have been submitted in 1989, at its 193rd and 194th meetings, held on 9 November 1994 (CAT/C/SR.193 and 194 and Add.2), and adopted the following conclusions and recommendations.

A. Introduction

63. The Committee appreciates the presence of a highly qualified delegation, as well as the clarifications and explanations supplied in both the written and oral reports.

B. Positive aspects

64. The Committee notes the intention expressed by the delegation to submit all the reports required by international human rights organizations and to respond to all their requests.

65. The Committee takes due note of the intensive campaign to make the armed forces and the police more aware of the need to respect human rights.

66. The Committee is pleased to note the approval of various items of legislation, such as that permitting procurators to visit places of detention in areas where a state of emergency has been declared, that providing for greater flexibility in the procedures relating to terrorism and those which establish new bodies for protecting human rights.

C. Subjects of concern

67. 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.

68. The Committee points out that the legislation intended to repress acts of terrorism does not meet the requirements of international agreements concerning a fair, just and impartial trial with minimum safeguards for the rights of the accused (for example, "faceless" judges, serious limitations on the right of defense, lack of opportunity to take proceedings before a court, extension of the period of incommunicado detention, etc.).

69. The Committee is also concerned by the subjection of civilians to military jurisdiction and by the fact that, in practice, the competence of the military courts is being extended as regards cases of abuse of authority.

D. Recommendations

70. The Committee is aware of the serious difficulties which Peru is experiencing because of the

terrorist attacks, which are to be condemned, and hopes that it will succeed in overcoming them.

71. Despite the determination stated by the delegation of Peru, in the Committee's opinion, the legislative and administrative measures adopted in order to comply with the Convention have not been effective in preventing acts of torture, as required by article 2, paragraph 1 of the Convention.

72. At the same time, the requirements of articles 12 and 13 of the Convention concerning the need for a prompt and impartial investigation of all complaints of torture are not being met.

73. Nevertheless, taking into consideration the intentions expressed by the delegation and the fact that the Government has available to it the means necessary to eradicate the scourge of torture, the Committee suggests the adoption of, among others, the following measures:

(a) The procedure relating to terrorist offences should be reviewed for the purpose of establishing a prosecution system which is effective but which preserves the independence and impartiality of the courts and the right of defense, with the elimination of so-called "faceless trials" and the holding of detainees incommunicado;

(b) The military courts should be regulated to prevent them from trying civilians and to restrict their jurisdiction to military offences, by introducing the appropriate legal and constitutional changes;

(c) The Judicature Council and the Ombudsman should start operating as soon as possible;

(d) The activities of the procurators' offices should be strengthened and they should be provided with the means necessary to perform their functions;

(e) The possibility of making the declarations provided for in the Convention in the circumstances described in articles 21 and 22 should be analyzed;

(f) Consideration should be given to defining torture as an independent offence punishable by a penalty appropriate to its seriousness;

(g) The efforts to educate medical and law-enforcement personnel, civil and military, should be intensified, as should the programmes for the full rehabilitation of victims.

CAT A/53/44 (1998)

197. The Committee considered the second periodic report of Peru (CAT/C/20/Add.6) at its 330th, 331st and 333rd meetings, held on 12 and 13 May 1998 (see CAT/C/SR.330, 331 and 333), and adopted the following conclusions and recommendations.

1. Introduction

198. The Committee welcomes the submission of the second periodic report of Peru which, despite the six year delay, nonetheless reflects the manifest wish of the State party to maintain dialogue.

199. The Committee also appreciates the fact that the size, quality and highly representative nature of the delegation of Peru is proof of the State party's interest in the work of the Committee.

2. Positive aspects

200. The Committee notes the following positive aspects.

(a) Peru's willingness to give effect to the recommendations that the Committee put forward during the consideration of the State party's initial report;

(b) The abolition of the "faceless judges" system;

(c) The introduction into Peruvian legislation of a definition of torture consistent with the provisions of article 1 of the Convention;

(d) The planned or actual reforms announced by the Minister of Justice, who headed the delegation of Peru, and which are designed to improve the human rights situation in the framework of the fight against terrorist violence and to reaffirm the independence of the judiciary.

3. Factors and difficulties impeding the application of the provisions of the Convention

201. The Committee finds no factors or difficulties impeding the effective application of the Convention by Peru.

4. Subjects of concern

202. The Committee is concerned about the following:

(a) The frequent and numerous allegations of torture;

(b) The maintenance of the competence of military courts to try civilians;

(c) The excessive role still assigned to military courts at the expense of civil courts;

(d) The laws passed between 1995 and 1998, which arguably seem designed as a renewed challenge

to the independence of the judiciary:

- (i) Act No. 26546 of 26 November 1995 establishing the Executive Commission of the Judiciary;
- (ii) Act No. 26623 of 19 June 1996 reorganizing the Office of the Public Prosecutor and establishing the Executive Commission of the Office of the Public Prosecutor;
- (iii) Act No. 26695 of 3 December 1996 establishing temporary benches at the Supreme Court and "higher courts";
- (iv) Act No. 26933 of 12 March 1998 limiting the powers of the National Council of the Judiciary;
- (e) The maintenance of emergency legislation hardly conducive to respect for human rights in general and the elimination of torture in particular.

5. Recommendations

203. While noting and welcoming the new measures that have been taken or announced, including some which are in the spirit of the recommendations made during the consideration of Peru's initial report, the Committee reiterates those recommendations and calls upon the State party to expedite reforms designed to establish a State genuinely founded upon the rule of law.

204. The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure, for example, that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure.

205. The State party should consider, pursuant to articles 6, 11, 12, 13 and 14 of the Convention, taking measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress, compensation and rehabilitation in all circumstances.

CAT A/55/44 (2000)

56. The Committee considered the third periodic report of Peru (CAT/C/39/Add.1) at its 399th, 402nd and 404th meetings on 12, 15 and 16 November 1999 (CAT/C/SR.399, 402 and 404), and adopted the following conclusions and recommendations.

1. Introduction

57. The Committee welcomes the submission of the third periodic report of Peru, which corresponds generally with the Committee's guidelines concerning the form and content of reports, as well as the continuing dialogue with experienced representatives of the State party, including the introductory oral information given by the delegation.

2. Positive aspects

58. The Committee notes as positive the following:

(a) The inclusion of the crime of torture, in broad conformity with the definition contained in article 1 of the Convention, in the Penal Code;

(b) The policy of placing the crime of aggravated treason within the jurisdiction of the civil courts;

(c) The comprehensive programme of education undertaken in all branches of the civil and armed forces to raise awareness of human rights obligations, in particular the prohibition against torture;

(d) The gradual lifting of the state of emergency laws in most of the country and the declared intention to lift them completely in the year 2000;

(e) The establishment of the office of the Ombudsman;

(f) The creation of a national registry of detainees and persons sentenced to a custodial penalty (Law No. 26295) which is publicly accessible;

(g) The creation of the Ad Hoc National Commission on Pardon;

(h) The reduction in recent years of complaints of maltreatment by persons in custody.

3. Subjects of concern

59. The Committee expresses concern about the following:

(a) The continuing numerous allegations of torture;

(b) The lack of "independence" of those members of the judiciary who have no security

of tenure;

(c) The period of incommunicado pre-trial detention of 15 days for persons suspected of acts of terrorism;

(d) The use of military courts to try civilians;

(e) The automatic penalty of at least one year of solitary confinement from the date of trial for anyone convicted of a terrorism offence;

(f) The apparent lack of effective investigation and prosecution of those who are accused of having committed acts of torture;

(g) The use of, in particular, the amnesty laws which preclude prosecution of alleged torturers who must, according to articles 4, 5 and 12 of the Convention, be investigated and prosecuted where appropriate;

(h) The maintenance in some parts of the country of emergency laws which abrogate ordinary human rights protection;

(i) The special prison regime applicable to convicted terrorists and in particular to convicted terrorist leaders;

(j) The failure of the Attorney General's Office to keep a precise register of persons who claim that they have been tortured.

4. Recommendations

60. The Committee against Torture reiterates the recommendations it made at the end of its consideration of the second periodic report of Peru on 12 May 1998, which are as follows;

"While noting and welcoming the new measures that have been taken or announced, including some which are in the spirit of the recommendations made during the consideration of Peru's initial report, the Committee reiterates those recommendations and calls upon the State party to expedite reforms designed to establish a State genuinely founded upon the rule of law.

"The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and careers of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure, for example, that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure.

"The State party should consider, pursuant to articles 6, 11, 12, 13 and 14 of the Convention,

taking measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress, compensation and rehabilitation in all circumstances."

61. In addition, the Committee recommends that:

(a) The State party should ensure vigorous investigation and, where appropriate, the prosecution of all reported instances of alleged torture and ill-treatment by its authorities, whether civil or military;

(b) The period of pre-trial incommunicado detention should be abolished;

(c) The **automatic** period of solitary confinement for persons convicted of terrorist offences should be abolished;

(d) Amnesty laws should exclude torture from their reach;

(e) The special regime that applies to convicted terrorists should be reviewed with a view to the gradual abolition of the virtual isolation and other restrictions that are inconsistent with the provisions of article 16 and may in certain cases amount to torture as defined in Article 1 of the Convention;

(f) A similar national registry to that pertaining to detainees should be established for persons claiming to be victims of torture.

62. The Committee once again emphasizes that the State party should return jurisdiction from military courts to civil courts in all matters concerning civilians.

63. Finally, the Committee calls upon the State party to consider making the declarations under articles 21 and 22 of the Convention.