

PERU

CCPR A/38/40 (1983)

255. The Committee considered the initial report (CCPR/C/6/Add.9) submitted by the Government of Peru at its 430th, 431st and 435th meetings, held on 5 and 7 April 1983 (CCPR/C/SR.430, 431 and 435).

256. The report was introduced by the representative of the State party, who explained the situation of human rights and the achievements of his country since the last presidential elections, held in 1980, and the introduction of the new Constitution including, *inter alia*, the consolidation of the mechanisms for protecting human rights through the remedies of *habeas corpus* and *amparo*, the restoration to the mass media of unrestricted freedom of expression and the introduction of several reforms in criminal law and criminal procedure, with a view to protecting human beings from repression and intimidation. In this respect he emphasized the role of both the Court of Constitutional Guarantees and the Office of the Government Attorney-General in safeguarding individual rights and added that citizens retained the right of recourse to the Attorney-General, even when a state of emergency or state of siege had been declared. Detention centres were being built to overcome the deplorable overcrowded conditions and promiscuity of prisons and important work had been undertaken in the training of prison staff, resulting in a more humane penitentiary system, based on rehabilitation rather than the imposition of severe punishment.

257. The representative indicated that one of the problems confronting Peru was the terrorist offensive in a specific area of the country; that terrorism had taken advantage of the fact that certain regions of the country were depressed in order to launch a campaign of destruction and death; that the Government had given orders to the police to deal with such acts with all necessary energy but to avoid any infringement of the human rights of the citizenry; that prisoners detained under the anti-terrorist laws were brought to justice in the regular courts and tried exclusively for the personal and material damage that they had caused and not for their ideological views; and that, because of that serious situation, the Government had been obliged to apply the relevant article of the Constitution relating to states of emergency or siege, but that it had always respected the limitations contained in article 4 (2) of the Covenant. The legal existence and personality of rural and indigenous communities had been accorded a number of guarantees under the Constitution ensuring a measure of autonomy.

258. Members of the Committee welcomed the restoration of democratic rule in Peru after years of military dictatorship, praised the progressive nature of the new Constitution, its comprehensiveness and the fact that it made it mandatory to include lessons on the Constitution and human rights in the curricula of all civilian and military education centres and at all levels. It would have been interesting to them, however, to have more information on the implementation of the new Constitution, to know the context to which Peruvian legislation was applied and to be apprised of all the difficulties encountered by the Government in the implementation of the Covenant. In this connection, it was asked whether the text of the Covenant and the Optional Protocol had been

published in Peru; whether the general public in Peru had known that a high-level delegation was coming to the Committee to present its Government's report; and whether any private human rights committee or international human rights organizations operated in Peru.

259. Noting that what could be called "terrorists" in one country could be called "left-wing rebels", "guerrilla fighters" or "counter-revolutionaries" in another country, that the way in which a Government dealt with dissidents or responded to terrorism was a crucial test of its will to preserve fundamental freedoms and of its respect for legality, and that a Government which went so far as to violate the rights established by both regional and international conventions could properly be said to be acting on terrorist lines, members wondered whether there was a guerrilla movement in Peru and, if so, what its goal was and whether there was a link between its demands and the principle referred to in article 1 of the Covenant; whether all those who had taken up arms in Ayacucho could really be termed "terrorists," considering the statement made by the representative of Peru to the effect that terrorist acts had occurred where the standard of living was lowest, and what the limits of the Government's activities were in combatting those acts.

260. With reference to article 1 of the Covenant, it was asked how the natural resources of Peru were developed, whether they were exploited by foreign corporations and in what way the people made use of the national patrimony; what the position of the Peruvian Government was with regard to the right of self-determination of the peoples of southern Africa and Palestine and how it was helping those peoples to achieve their rights.

261. As regards article 2 of the Covenant, it was noted that the distinctions listed in the Constitution in respect of which discrimination was prohibited did not include other distinctions mentioned in this article, namely political or other opinion, national or social origin, property, birth or other status and it was asked whether that omission was deliberate and whether Peruvian laws provided for the equal protection of the law without discrimination. Impressed by the legal framework established to protect human rights, including a Court of Constitutional Guarantees, by the incorporation of the Covenant in domestic law and by the fact that, in the event of conflict, the provisions of the Covenant would prevail over domestic laws, members asked whether non-legislative measures to safeguard human rights were also available; whether Peruvian citizens could invoke specific rights provided for in the Covenant directly, without having to refer to national laws; whether the Court of Constitutional Guarantees was already functioning and, if so, what decisions it had adopted; whether a claim that a legal enactment was contrary to the Covenant would come under the jurisdiction of the Constitutional Court; which legal organs filed appeals with that court, whether those organs were independent and whether it was possible for an individual to file complaints with the Constitutional Court; whether such an individual could institute proceedings if he believed that not only his rights, but also the rights of a third party or the public interest, had been infringed; what recourse was available to a person who believed that he had been wronged by the administration and whether individuals could challenge the constitutionality of administrative Acts. Noting from the report that legislation on "habeas corpus, amparo and public actions" was under consideration in Parliament, members wondered whether the object of that consideration was to amplify or modify the existing system of remedies; which competent tribunals, other than the Constitutional Court, could grant the remedies of habeas corpus and amparo; whether possibilities of access to justice existed in remote areas; whether individuals could themselves institute actions of habeas corpus and amparo or would need a lawyer to do so, and whether such actions would have suspensive effect.

Reference was made to three organs mentioned in the report as being responsible for protecting human rights in Peru, namely, the Human Rights Committee in the House of Deputies, the Ministerio Publico and the Ministry of Justice, and precise information was requested on the powers of each of those organs and on whether the above-mentioned remedies were affected during the state of emergency. In this connection, it was asked whether abuses committed in the application of states of emergency had been investigated; what penalties had been imposed on the military or civilian personnel responsible for the violation of human rights and what procedures had been followed in that respect.

262. Noting that the report had made no mention of article 3 of the Covenant and that the commitment undertaken by States to ensure full equality between men and women required more than a passing reference to the equality of citizens before the law without distinction as to sex, members sought information on the role of women in public organs; on their representation in decision-making functions; on the measures that had been taken by the Government to attain the objectives of the United Nations Decade for Women and on the extent to which women were integrated into rural development.

263. Referring to the state of emergency as proclaimed under article 4 of the Covenant and notified, through the Secretary-General, to the State parties, members asked when it had been proclaimed for the first time in Peru; why the Government had extended it after 25 February 1982; whether the extension related to its territorial scope or its temporal duration; how the Peruvian Government justified the suspension of political rights in the case of natural disaster and what exactly the Government meant by “perverse delinquency” as justification for the proclamation of one of the states of emergency.

264. With regard to article 6 of the Covenant, it was asked what steps had been taken to reduce the infant mortality rate and to meet the food needs of the population, to protect adult life and, in general, to improve public health and to raise the standard of living. Members also asked what measures had been taken to ensure that “no one shall be arbitrarily deprived of his life;” whether there were any provisions governing the use of weapons by the police and armed forces; what acts justified such use of weapons and whether there were any safeguards against abuses; whether an inquiry was made when such use of weapons resulted in the death of an individual; whether it was true that killings had taken place in Lurigancho and Ayacucho prisons in 1982 and, if so, whether an inquiry had been conducted and what were the findings; and what the investigation had revealed in the killing of a number of journalists in the Ayacucho province. Noting that the death penalty could not be applied in Peru except for “treason in a foreign war,” members asked whether the citizens in question came under the jurisdiction of civilian courts or military tribunals and whether it was true that a proposed legislative amendment was designed to extend the scope of the death penalty.

265. In connection with articles 7 and 10 of the Covenant, appreciation was expressed of an article in the Constitution providing that ‘anyone can petition a judge that he order the immediate medical examination of a confined individual if he believes that the latter is the victim of ill-treatment’ and members wondered, however, who called on States parties to adopt a similar provision, to what extent such a measure was actually enforced and whether it applied to persons in institutions other than prisons; whether cases of torture had occurred of people accused of terrorism as well as of

peasants in Ayacucho and, if so, whether there had been any official investigation of such cases; whether any offenders were discovered and punished; whether there were any regulations governing solitary confinement; how the fact of holding an individual incommunicado facilitated an investigation into a crime; whether prisoners had remedies against the prison administration; and whether prisoners were allowed to talk directly with prison visitors unattended by prison authorities; who inspected conditions of confinement, listened to any complaints and then ensured that they were looked into. Information was also requested on the exact situation in overcrowded Peruvian prisons in the light of the standards prescribed in the Constitution and on the steps taken to improve that situation.

266. Commenting on article 9 of the Covenant, members asked whether the law provided for deprivation of liberty for reasons other than a criminal offence and, if so, what protective measures were provided for; whether provisions existed which restricted the possibility of the renewal or extension of the maximum period prescribed for preventive detention and whether a person so detained enjoyed the right “to communicate with, and be advised by, counsel of his own choosing” mentioned in the report on article 9 of the Covenant; what the maximum duration of pre-trial detention was and whether it could exceed three to six months and, if so, what provision Peruvian law made for preventing abuse in this respect and whether the individual’s right to be informed immediately and in writing of the grounds or reasons for his arrest was suspended during the state of emergency. Noting that, according to Peruvian law, when the armed forces took control of emergency situations they had the power to detain “political terrorists” and hand them over to the legal authorities when an examining magistrate so required it, one member asked what happened if an examining magistrate did not require that and whether, in such a case, detention ceased automatically. It was also asked whether a person who had been unlawfully arrested or detained but not tried was entitled to compensation.

267. In connection with article 13 of the Covenant, information was requested about the status of and guarantees available to aliens in Peru, particularly about remedies available to aliens legally residing in Peru who had not been found guilty of offences, in the event that they were faced with expulsion or summoned before a court.

268. As regards article 14 of the Covenant, it was asked whether in Peruvian law the idea of equality before the law also implied equality in the administration of justice; how the independence of the judiciary and the proper administration of justice were ensured if they were to be overseen by the Office of the Government Attorney-General and whether that could not be interpreted as a mingling of the functions vested in the executive and the judiciary; whether the independence of the judiciary was always respected; whether a certain criterion, particularly of a political nature, might be invoked in the appointment of judges; how many judges there were on the Supreme Court and how they were appointed; and whether it was true that a Peruvian judge had been removed from office for applying the Penal Code and not the law on terrorism. Information was requested on the appointment of associate magistrates to the “hierarchically integrated” tribunals referred to in the Constitution, the system of promotion and dismissal governing them, their salaries and the age at which they retired; whether the “justices of the peace” were trained jurists or magistrates having no formal legal qualifications and, if so, what qualifications they had to have for their posts and how they were appointed; whether there were courts competent to deal with labour disputes; whether exceptional courts and special procedures had been established under the state of emergency and,

if so, to what extent such courts offered guarantees of a trial under the prescribed rules. It was also asked how much freedom lawyers were allowed to practice and whether it was true that at least four lawyers representing persons accused of terrorist activities were recently imprisoned. While commending the articles of the Constitution dealing with judicial guarantees, members wondered whether those provisions were always properly implemented and asked whether accused persons were ensured the right to communicate with their counsels; whether express provisions had existed to ensure that everyone was entitled “to be tried without undue delay”; whether free legal assistance was provided in cases where the accused could not afford to provide his own and to what extent the provision for proportional remissions for illiterate offenders who acquired some education was applied in practice.

269. Commenting on article 18 in conjunction with article 2 (1) of the Covenant, one member wondered whether the special treatment accorded to the Catholic Church in the Peruvian Constitution could imply discrimination with regard to other religions. It was also asked what the position was with respect to conscientious objection and whether it was recognized as part of freedom of religion.

270. With respect to article 19 of the Covenant, information was requested on the legal provisions governing the freedoms guaranteed in this article in addition to the relevant articles in the Constitution and the Penal Code; on whether “the return of communications media to their rightful owners” was in itself sufficient to establish freedom of expression as the report seemed to imply; on whom “the rightful owners” were; on the role of public information organs at election time and on whether the press had, in practice, become the instrument of the authorities. Reference was made in particular to measures recently decreed in Peru, including Decree Law No. 46 on terrorism, which seemed to have limited freedom of expression and increased the risks and penalties facing journalists in the exercise of their profession and it was asked to what extent greater penalties and reduced protection for journalists had created difficult situations as far as freedom of expression was concerned, how the Peruvian authorities were using the powers over the information media available to them under current legislation and whether the Peruvian Government would consider rescinding Decree Law No. 46 once the state of emergency which had justified it was lifted.

271. In connection with articles 21 and 22 of the Covenant, it was asked whether it could ever be correct to classify anything so small as a meeting of three people as a political terrorist organization as stipulated under Peru’s Decree Law No. 46; whether Peru had any problems with the ILO Committee on Freedom of Association and whether a judge could, in his personal capacity, engage in activities - social, political, scholarly, humanitarian and so on - unrelated to his functions.

272. With reference to articles 23 and 24 of the Covenant, it was noted that, according to the Constitution, mothers were entitled to protection and assistance from the State in case of need and it was asked what the situation of fathers was; whether family assets could be divided upon transmission through inheritance; whether a foreign-born daughter could, on reaching the age of majority, opt for Peruvian nationality; whether children were protected against all forms of neglect, cruelty and exploitation; whether there were children’s courts; what percentage of children attended schools; what percentage of children were born out of wedlock and whether house-care services were provided.

273. Commenting on article 25 of the Covenant, members pointed out that the deprivation of members of the Police and the armed forces of the right to vote and the pronouncement by a judge of a sentence which had the effect of depriving a person of his political rights seemed to be incompatible with the provisions of this article; whether illiterate citizens had the right to vote in elections other than municipal elections and whether all political parties had equal access to the media. Noting that the Congress had delegated its powers to the Executive branch, one member asked whether the Congress maintained effective supervision over the use made of the legislative powers it had delegated and how the institutional machinery between the Ministry of the Interior and the Congress functioned during the state of emergency.

274. As regards article 27 of the Covenant, members noted that little information was provided in the report about the status and treatment of ethnic and linguistic minorities in Peru. They requested more information on the legal regulation and measures adopted to protect the country's minorities and particularly on aboriginal groups and the percentage of the population they represented, their land rights, the religions they practised, the number of schools providing instruction in their languages; on whether teachers were members of the groups concerned and on whether their representatives could sit in Parliament.

275. Replying to questions raised by members of the Committee, the representative of the State party indicated that his Government was making every effort to extend the educational system and social services further to cover the smallest minority groups in isolated areas, but that the country's very diversified and often rough terrain, as well as the co-existence of many and varied ethnic groups posed an immense obstacle. He also pointed out that awareness of the international instruments signed and ratified by Peru was still rather limited, but that the provisions of the Covenant were widely known in practice since they had been incorporated into the new Constitution and hence were reflected in the very organization of the State; that human rights were also covered in the teaching of Constitutional law and public international law and that the submission of Peru's report to the Committee had been announced in the Official Journal and various press organs read nation-wide.

276. As regards questions posed under article 1 of the Covenant, he explained that Peru was a country with vast natural resources, that plans for economic expansion and exploitation of home resources required investment on a level exceeding its own means and that, consequently, his Government was seeking assistance from abroad on forming joint ventures with private companies, some of which were foreign. He also explained his country's firm position in defending and supporting the inalienable rights of the Palestinian people and the right of self-determination of the Namibian people.

277. In connection with questions posed under article 2 of the Covenant, the representative stated that although the Peruvian Constitution did not state specifically that all persons were equal before the law without any distinction on grounds of social or economic origin, birth or other status, Peruvian legislation and the Peruvian courts made no distinction of that kind and he drew attention to article 105 of the Constitution, which provided that principles stipulated in treaties relative to human rights to which Peru had acceded, had constitutional priority. He also stressed that the concept of equality before the law, which had as its corollary equal protection before the law, had its practical and effective counterpart in the remedies of amparo and habeas corpus, as well as in

citizen actions and recourse to the Court of Constitutional Guarantees and to international tribunals. In this connection, he pointed out that bills on the remedies of habeas corpus and amparo had been enacted since the submission of the report to the Committee; that those two remedies were available in cases of actual or potential infringement of rights guaranteed by the Constitution; that proceedings could be initiated either by the injured party or a third party and that no special requirements had to be met; that habeas corpus proceedings were within the sphere of criminal law while amparo was a proceeding before the civil courts and that if the complaint was declared inadmissible, the complainant could appeal to the Court of Constitutional Guarantees. He informed the Committee that this Court, which was established in December 1982, also monitored the constitutionality of laws with regard to both their substance and their form; that members of the Court were appointed in equal numbers by Congress, the Executive and the Supreme Court; that a matter could be brought before the Court by the President of the Republic, the Supreme Court, the Chief State Counsel, a group of 60 deputies or 20 senators, or a group of 50,000 petitioning citizens; that in each of the 1,600 districts in Peru there was at least one justice of the peace and non-career judge; that in each of the 25 departments there was a higher jurisdiction and that the Supreme Court had its seat at Lima; that while the coverage of the judicial system was not yet as extensive as it ought to be, there was virtually no part of the country which did not have a judge and that any administrative dispute could be submitted to the courts and the law specified clearly which courts were competent in such cases. Replying to other questions, he pointed out that the remedies of habeas corpus and amparo were suspended under the state of emergency only in the case of those rights which it restricted and that any excesses committed during the state of emergency were the subject of a judicial inquiry and the guilty parties were punished; that the forces of law and order were instructed to avoid any abuse of authority. He explained that the Office of the Chief State Counsel (Ministerio Público) was in reality more like the institution of Ombudsman; that it was autonomous and completely independent of the executive and legislative branches and that it saw to it that the judicial institutions remained independent, protected the rights of citizens and ensured that justice was properly administered; that the Human Rights Committee was a committee of inquiry set up by the House of Deputies; that it had the same powers as any parliamentary committee; that a summons to appear before it had the same force as a summons issued by a court and that human rights were also protected by private organizations such as the National Human Rights Commission, the Andes Commission of Jurists and human rights committees of the Lima Bar Association and the Bar Federation of Peru.

278. With respect to questions posed under article 3 of the Covenant, the representative stated that men and women had equal responsibilities and opportunities; that the rights of women were not inferior to those of men, and that women were playing a role in all spheres of national life and were increasingly rising to high-level posts.

279. As regards article 4 of the Covenant, he pointed out that the emergency measures which had been taken had always been kept within the time-limits authorized by the Constitution and that they applied only in certain provinces; that they were usually prompted by terrorist activities but sometimes also, as had happened recently in Lima, by a natural disaster, in which case their purpose was to prevent any public disturbance which would make the situation even worse.

280. In connection with questions raised under article 6 of the Covenant, the representative stated that, in fact, mortality and morbidity rates had been declining for some years; that his Government was currently conducting a vast information campaign on health and hygiene for mothers; that the

wrongful use of firearms by the forces of law and order was severely punished but that when police officers used their weapons in accordance with the regulations they were relieved of any civil or criminal responsibility; that the investigation in the murder of journalists had concluded that the Government had played no part in the incident and that the journalists had been murdered by the inhabitants of a remote village precisely because they had been taken for terrorists; that Parliament had not been presented with any draft legislation designed to increase the number of cases which would be subject to the death penalty and that the trial for treason during a foreign war was conducted under the Military Code of Justice.

281. In relation to questions raised under articles 7 and 10 of the Covenant, he informed the Committee that his Government had ordered a thorough inquiry into the Catholic Church's charges that prisoners had been subjected to torture and ill-treatment with the aim of determining where the responsibility lay and punishing the guilty party; that solitary confinement was an exceptional measure which could be imposed only for a period between one day and 15 days, according to the offence committed, and then only in the case of dangerous criminals; that the International Committee of the Red Cross was allowed to visit Peruvian prisons whenever it so requested, in accordance with the relevant provisions of the Geneva Conventions; that members of Parliament and of private associations for the protection of human rights also had access to prisons; that the Peruvian Government had recently adopted a new set of prison regulations, which indicated the legal remedies available to prisoners against the prison administration and which stipulated that they had the right to be heard and to seek the advice of persons of their own choice, including legal counsel. He also explained the problem of overcrowding in some prisons, which the Government was trying to solve with a view to improving the situation, despite obstacles and stressed that Peru, as a developing country, was paying for the negligence of previous Governments in that respect.

282. As regards article 9 of the Covenant, the representative stated that the period of 24 hours within which the police were required to bring an arrested person before a court could not be extended; that in cases of terrorism, espionage and trafficking in drugs, suspects could not be held in custody for more than 15 days; that every individual must be informed immediately of the reasons for his arrest and that there were no political prisoners in Peru.

282a. Responding to questions raised under article 13 of the Covenant, he stressed that aliens could only be deported on serious grounds, such as offences against public order or national security, illicit drug trafficking or prostitution, and that anyone ordered to be deported could appeal against the court order.

283. Commenting on questions posed under article 14 of the Covenant, the representative stated that the responsibility for ensuring the independence of the judiciary rested not with the Ministry of Justice but with the Public Prosecutor's Office; that this Office was an autonomous body charged with defending legality, citizens' rights and the public interest and whose highest authority was the Public Prosecutor of the Republic; that justice was administered exclusively by the Courts and that no authority could interfere in the conduct of judicial proceedings; that judges could not be removed and they retained their functions until the age of 70; that judges of the Supreme Court and higher tribunals were nominated by the National Council of the Judiciary; that judges of first instance, examining magistrates and justices of the peace were nominated by the District Councils of the Judiciary; that justices of the peace almost always had legal training; that the Code of Penal

Procedure clearly stipulated the obligation of courts to appoint defence council proprio motu, that such counsel acted at all stages of preliminary proceedings, took part in trials and presented their cases and that his delegation was not aware of the reported cases of certain judges being removed from their posts and of certain lawyers being arrested.

284. With respect to article 18 of the Covenant, the representative stated that recognition of the historical role of the Catholic Church was not surprising in a country where 90 per cent of the population professed Catholicism; that the State was prepared to establish forms of co-operation with other faiths; and that the Constitution made no provision concerning conscientious objection and refusal to perform military service, but that so far as was known there had never been any problem in that respect.

285. In connection with questions raised under article 19 of the Covenant, he stated that, in Peru, freedom of expression was a reality, as evidenced by the many newspapers published in Lima and throughout the country; that amendments to the Penal Code relating to the offence of libel and abuse of authority had made it punishable either to insult officials through the press or to interfere with freedom of the press and that every citizen had the right to request publication of a reply to an article about him.

286. In relation to questions posed under article 22 of the Covenant, the representative mentioned the ILO Conventions entered into by Peru and indicated that the functions of judges were incompatible with any public or private activity.

287. Replying to questions raised under articles 23 and 24, he indicated that the State, which protected responsible parenthood, took particular care of the rights of mothers, children, adolescents, the disabled and the aged; that family inheritances were divisible; that the terms "hijo" mentioned in the Constitution in relation to nationality was a generic term covering both sexes; that 91 per cent of the child population attended schools, and that the legal distinction between legitimate and illegitimate children had been abolished under Peruvian law.

288. Commenting on questions posed under article 25 of the Covenant, he pointed out that the deprivation of members of the police and the armed forces of the right to vote reflected the concern to keep the armed forces out of politics and to reduce, as far as possible, the part they could play in Government to the detriment of constitutional order and the law; that citizens of both sexes over the age of 18, including illiterates, had the right to vote at the periodic presidential, legislative and municipal elections; that, at election time, candidates and political parties had access on an equal footing to those communications media owned by the State and that their expenses were reimbursed in proportion to the votes cast for each party. He also indicated that the delegation by the legislature of its powers to the Executive was exceptional and did not in any way foreshadow the future; that it had arisen because the legislative bodies had been overwhelmed with work when they had had to revise all the legislation issued over a period of 12 years by a de facto Government; and that, however, the delegation of powers was provided for in the Constitution, which restricted it to such matters and such duration as were specified by law.

289. Replying to questions raised under article 27 of the Covenant, the representative stated that the Constitution guaranteed the legal personality of peasant and indigenous communities and the

inviolability, imprescriptibility and inalienability of their lands and provided for the preservation and stimulation of the manifestation of native cultures, required for the State to promote the study and knowledge of aboriginal languages, and guaranteed the right of the Quechua, Aymara and other native communities to receive primary education in their own dialect or language. The State respected and protected the traditions of those communities, promoted their development, encouraged community co-operative enterprises and fostered pluralism and linguistic integration. Citizens belonging to an ethnic minority could be elected to Parliament or any other public office, but that for many reasons, particularly the country's geography, sections of the Peruvian population were still not being integrated into national life.

290. The representative of the State party recognized that it had not been possible to reply exhaustively to all the questions asked and stated that his delegation would endeavour to fill in the gaps as soon as possible.

CCPR A/47/40 (1992)

300. The Committee began the consideration of the second periodic report of Peru (CCPR/C/51/Add.4) at its 1133rd to 1136th meetings (forty-fourth session), held from 31 March to 2 April 1992 (CCPR/C/SR.1133-1136). The Committee decided, at the request of the Government of Peru, not to conclude the consideration of that report until its forty-fifth session and to take into account the additional information offered by the State party that was to be supplied in response to the unanswered queries and concerns of Committee members. Subsequently, after it had become aware of the events that had occurred in Peru on 5 April 1992, the Committee decided, at its 1148th meeting held on 10 April 1992, to request that a supplementary report dealing with those events, particularly in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant, should also be submitted to it for consideration (together with the additional information) at its forty-fifth session. After noting the additional information provided by the Government of Peru (CCPR/C/51/Add.5) and after considering the supplementary report on the effects of the events occurring after 5 April 1992 (CCPR/C/51/Add.6) at its 1158th to 1160th meetings, held on 20 and 21 July 1992 (CCPR/C/SR.1158-1160), the Committee concluded its consideration of the second periodic report of Peru. (For the composition of the delegation, see annex VIII.)

301. The report was introduced by the representative of the State party, who said that the current dynamics of terrorist violence in Peru had prevented the Government from giving full legal scope to the promotion and observance of civil and political rights. As an illustration of the troubled situation in Peru, the representative explained that the Public Prosecutor for Terrorism, who was the person originally designated to present the report to the Committee, was not able to come owing to death threats from the Shining Path (Sendero Luminoso) terrorist group. In such difficult circumstances, the Peruvian Government had nevertheless developed a comprehensive human rights strategy that had led to the issuance of new legislative decrees and the adoption of other provisions to deal with human rights problems involving civil and political rights. Those new measures included the promulgation of the new Penal Code, the establishment of the Council for Peace, the delegation of authority to government inspectors during states of emergency, enhancement of the powers of political authorities in zones of states of emergency where the armed forces had assumed control, the setting up of a register of detained persons and the implementation of a national plan for publicizing and teaching the Constitution of Peru and human rights instruments.

Constitutional and legal framework within the Covenant is implemented, in particular during the state of emergency

302. With respect to that issue, members wished to receive information or clarification concerning measures to bring Peruvian legislation in line with the Covenant; the remedies of habeas corpus or amparo; the functions and operation of the legal system; the rights derogated from during the successive states of emergency and the resulting impact on the exercise of the rights guaranteed under the Covenant; effective remedies for violation of human rights during a state of emergency; the respective powers of the Government as well as other constitutional bodies and the armed forces during a state of emergency; the impact of subversive and drug-trafficking activities; and the Government's efforts to comply with the provisions of the Covenant and to promote public awareness of human rights instruments. Members also wished to be advised of the follow-up action

taken as a result of the views adopted by the Committee with regard to Peru in communications Nos. 202/1986 and 203/1986.

303. In addition, members wished to know which practical measures had been implemented to ensure the effective enjoyment of human rights, in particular during a state of emergency; how the declaration of localized or short-term states of emergency could be reconciled with the Covenant; why article 2 (2) of the Peruvian Constitution, guaranteeing equality without discrimination, did not include all the categories listed in article 2 of the Covenant; what were the “expeditious actions” that had been taken to suppress terrorism; whether the reported 5,000 disappearances could be attributed to the “excesses” of a few members of the military; what were the lowest courts before which actions of habeas corpus or amparo could be brought; what the proposed preventive action of habeas corpus would consist of; how the reported massacre by the armed forces in Callara could be justified by the so-called principle of collective responsibility; and how the independence of the judicial system could be guaranteed, in practice, by the Public Prosecutor’s Office. Members wished to know further whether the National Council for Human Rights was also responsible for preparing reports for submission to international organizations; whether the texts of treaties relating to human rights, which had constitutional priority, were reflected in Peruvian legislation; whether individuals could directly invoke the provisions of the Covenant; whether the Government had inquired into alleged cases of intimidation from both terrorist groups and government agencies; whether those responsible for excesses had been found guilty and punished; what measures had been taken to overcome the problems referred to in the report of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/1991/20); whether a private citizen could institute proceedings to declare a law unconstitutional; and what difficulties had been encountered by the judiciary when trying offences committed by the armed forces.

304. In his response to the questions raised by members of the Committee, the representative of the State party said that the Peruvian Constitution contained specific provisions that reflected the Covenant, and the Government had also been amending national legislation to conform with the Covenant. Article 101 of the Constitution stipulated that international treaties formed part of Peruvian law and prevailed over conflicting national provisions. The Court of Constitutional Guarantees, having the competence to declare the unconstitutionality of laws and decrees, was the highest body qualified to deal with habeas corpus and amparo.

305. In connection with the questions relating to states of emergency, the representative explained that the rights to personal freedom, the security and inviolability of the home and freedom of assembly and of movement within the national territory could only be suspended but not derogated from upon the declaration of a state of emergency. The remedies of habeas corpus and amparo, as well as the remedy of preventive habeas corpus, remained available to person who believed that their rights would be restricted. The situation would be improved by a new bill designed to overcome shortcomings in national legislation and to ensure full enjoyment of the right to habeas corpus.

306. Concerning other questions raised by members of the Committee, the representative said that it was the Government’s policy to take measures to punish groups engaged in terrorism or drug trafficking. In a Memorandum of Understanding signed in 1991 between Peru and the United States of America to combat illicit drug trafficking, specific provisions were included to ensure that human rights would be respected when carrying out the anti-drug strategy. Teaching the provisions of the

Covenant and other international human rights instruments had been made obligatory in educational institutions, both military and civilian, at all levels. The authorities in Peru had been making efforts to defend human rights and were considering ways to follow up on United Nations documents and to improve observance of the provisions of the Covenant.

307. The representative of the State party stressed that one of the main obstacles to the full implementation of the rule of law and of human rights in Peru was the continued activities of terrorist groups, such as the Shining Path, which could not be described as insurgents because they sought to establish totalitarianism and anti-democratic regimes and showed no respect for human rights. The Peruvian Government did not have a policy to deal with systematic violations of human rights. While mistakes could be and had been made, respect for human life was the cornerstone of Peru's democratic system and developing economy. With regard to the excesses committed by the armed forces and national police during the state of emergency from August 1989 to July 1991, 37 members of the army had been punished and 2 cases involving members of the navy were being investigated. Difficulties encountered in implementing rights under the Covenant also included logistic and procedural problems, such as the lack of infrastructure and difficulties stemming from the low salaries of the judicial officers. It was sometimes necessary to establish military-political commands to restore order in areas where the civilian authorities had either been assassinated or threatened by terrorist groups. However, the Government and the President had overall responsibility for maintaining law and order. A new law empowering the armed forces to take control of internal order and establish military-political commands in emergency zones gave the political authorities full rights in such zones and reaffirmed the authority of regional governments as part of an anti-terrorist strategy designed to strengthen the State's authority. Prosecutors were authorized to visit police stations, military installations and other detention centres to monitor the situation of detainees and investigate alleged disappearances. A state of siege applied to the entire country and could be put into effect in the event of, or in the imminence of, invasion, foreign war or civil war.

308. The authority to legislate could be delegated to the executive under article 188 of the Constitution. The President was required to report to Congress on legislative decrees issued in exercise of such delegated powers. The National Council of the Magistracy was responsible for proposing to the President the appointment of judges and the Supreme Court investigated the functioning of the judiciary. Disappearances had fallen from 231 in 1990 to 117 in 1991. Cases of alleged torture had also fallen from 22 in 1990 to 7 in 1991. On the other hand, the number of disappearances where the Government of Peru had cooperated by providing specific answers had increased. The constitutionality of a law could be challenged by the President, 60 deputies or 20 senators, or by a petition of 50,000 citizens.

Right to life; recognition as a person before the law; liberty and security of the person; prohibition of slavery and servitude; treatment of prisoners and other detainees

309. In connection with those issues, members wished to know what measures had been taken to investigate, and to prevent the occurrence of, disappearances, extrajudicial executions or torture; what the rules were governing the use and abuse of firearms by the police and security forces; the rate of infant mortality as well as the legality of abortion; whether confessions obtained under torture could be used in court proceedings; what kind of restrictions could be placed on an individual's

liberty; how quickly a person's family was informed of his arrest; what the policy was on decriminalizing prison inmates; what arrangements had been made for supervising detention centres; and what the procedures were for submitting and investigating complaints. Members also inquired whether arrested persons were actually brought to court within 24 hours, or as soon as distance permitted, during operations conducted to combat terrorism and insurgency; whether detainees were segregated from convicted prisoners; and whether offenders under 18 were separated from adult offenders.

310. Members were also concerned about the exemption from criminal responsibility, pursuant to article 20 of the Peruvian Penal Code, for abuse of power and unnecessary use of violence by a person acting under orders. Noting that similar provisions in other States parties had been found to be in violation of the Covenant, members wondered how and in how many instances that exemption had been granted. Members also wished to know about the impact of the presidential decree of 1990, which restricted the options to challenges to acts performed in an official capacity, as well as about presidential immunity from prosecution. More information was also requested on the new Penal Code, which did not seem to be applicable to the armed forces and police; enforced conscription; prison conditions; the guarantees and protection given to prosecutors during the performance of their functions; and the impact on rights guaranteed under article 14 of the Covenant applying the concept of collective responsibility in the emergency zones. Given that some 75 per cent of the prison population in Peru consisted of people who had not yet been tried, among whom there were several hundred female prisoners with over 100 dependent children, members asked whether it was the view of the Government that there was no need in practice to take account of the provisions of article 9 of the Covenant.

311. In reply to the questions raised by members, the representative of the State party said that disappearances, extrajudicial executions and torture, or any other form of physical violence, were offences under Peruvian law. The Government was aware of the need to give priority attention to children and the adoption of relevant policies and decrees had been accelerated. The rights of the unborn child were protected by article 2 of the Constitution and abortion was punishable under the Penal Code, except when carried out on the recommendation of a panel of doctors. Infant mortality had dropped substantially with the aid of the United Nations Children's Fund (UNICEF). Statements obtained through the use of violence were not admissible and the law on habeas corpus and amparo contained provisions to ensure that ill-treatment was not used to extract confessions. No one could be arrested without a written court order from a judge, or from the police in cases of flagrante delicto, and those arrested had to be informed immediately and in writing of the reasons for their detention. Such persons had the right to communicate with and be advised by an attorney of their choice from the time they were charged or arrested. No one could be held incommunicado except where the investigation of a crime made it indispensable. In all cases, the arrested persons would be brought before court within 24 hours or within the time needed to arrive at the court. An aggrieved detainee could invoke the remedies of habeas corpus and amparo.

312. In connection with a directive which, according to Amnesty International, "purported to permit troops to carry out killings without a trace", the representative stressed that the directive was not government policy and not part of the legislative corpus of Peru. With regard to enforced recruitment, the representative attributed guilt to the terrorist group, the Shining Path, which frequently obliged minors to join its ranks. However, there was considerable interest in forming

urban patrols for protection on a block-by-block basis. Military service was governed by the Compulsory Military Service Act, which provided for military training for all eligible men and women. The Government was concerned about disappearances and was conducting investigations through prosecutors and Red Cross officials. A special Senate Commission on violence and pacification had been established and was drafting amendments to the law governing the state of emergency. Efforts were also being made to remedy shortcomings in prisons and to improve basic facilities such as meals. All children above three years of age had recently been removed from prison institutions.

Right to a fair trial and right to privacy

313. With regard to that issue, members of the Committee wished to receive information on guarantees for the independence and impartiality of the judiciary and measures adopted to prevent intimidation of the members of the judiciary; legal and administrative provisions governing tenure and discipline of members of the judiciary; and the organization and functioning of the Bar in Peru and the availability of defence counsel in criminal cases. Members also wished to know whether there were any special courts and, if so, what their jurisdiction and review or appeal procedures were; who could appoint or dismiss judges and under what conditions; how jurisdiction was divided between military and civilian courts in cases where military personnel were allegedly involved in disappearances and torture; how the requirement to provide legal representation could be met in practice given the shortage of lawyers in the country; and whether lawyers were subject to territorial restrictions.

314. In addition, members wished to know whether the principle of exclusivity and unity of the jurisdictional function had been suspended or derogated from during the state of emergency; whether the provision in the Constitution whereby 2 per cent of the annual budget should be set aside for the judicial branch had been adhered to; and whether the administration of justice had been abrogated during states of emergency.

315. In his response, the representative of the State party said that the independence and impartiality of judges was guaranteed under the Constitution. A general office was established by law for the monitoring of the judiciary and a range of sanctions and disciplinary measures was also provided for. Judges were appointed by the President on the advice of the National Judges' Council. Lay judges were called upon to deal with minor cases and misdemeanours only. There was a free legal advice scheme in Peru and any detained person had the right to be advised by and talk with a lawyer of his choice. There were about 18,500 lawyers in Lima and lawyers were all members of the Peruvian Federation of Bar Associations. Jurisdiction was based on the fact that each department of Peru was a separate judicial district. All courts in Peru formed part of the judiciary system or the system of military justice. Civilians were subject only to civilian jurisdiction. In cases of jurisdictional conflicts between civilian and military tribunals, it was the function of the Supreme Court to settle the matter. The remedies of habeas corpus and amparo could be brought before any judge, who was obliged to consider them. Appeals against judgements by a military court were possible, failing which the accused could make use of a complaint procedure. As of 1991, the budget for the judicial branch had been increased to 2 per cent of the central Government's budget as required by the Constitution. Only the rights guaranteed under article 31 of the Constitution had been derogated from and guarantees relating to the administration of justice had not been affected

by the states of emergency.

Freedom of movement and expulsion of aliens; right to privacy; freedom of religion, expression, assembly and association; and right to participate in the conduct of public affairs

316. With reference to those issues, members of the Committee wished to receive information concerning grounds for the expulsion of aliens; procedures for the legal recognition and authorization of various religious denominations and as to whether the Roman Catholic Church enjoyed privileged treatment; limitations on freedom of the mass media; and restrictions on the right to vote imposed on the armed forces and the police. In the latter case, they wished to know, in particular, what the Government was doing to ensure that denial of voting rights did not alienate the armed forces and the police from civil society. They also requested clarification of the statement in the report that “in most cases, shutdowns, strikes or similar work stoppages have been settled through ordinary legal procedures” and of the provisions of the recent presidential decree authorizing certain powers of censorship in the interest of national security and permitting the armed forces access to the universities.

317. In addition, members wished to know whether there were displaced persons in areas close to military activities and how the population in such areas was protected; what type of acts were deemed by the Aliens’ Act to contravene the law, morals, decency and security of the State; and whether the prohibition against expressing an opinion critical of the State would restrict the constitutionally protected freedom of expression and whether that prohibition extended also to those in power; what the functions were of the State Intelligence Bureau; how the emergency powers relating to the abrogation of existing collective agreements and the suspension of collective bargaining processes had been applied and whether any compensation was paid to those who had been affected by such abrogation of rights; how the detention under the anti-terrorism law of two newspaper editors could be reconciled with respect for freedom of expression.

318. As regards the right to privacy, members noted that existing provisions in Peru seemed to contain no express prohibition against the use of electronic devices for interfering with communications and asked what the Government’s response had been to the reported telephone taps placed on union leaders, candidates for office and reporters. Members also wished to know whether there had been any derogations from the inviolability of communications during states of emergency.

319. In response, the representative of the State party said that the Constitution established the right of any citizen to freedom of movement, except where such movement was prohibited for reasons of public health. No person could be expelled except by special mandate or by application of the Aliens’ Act. The expulsion of aliens was justified only in exceptional cases. There were no procedures for the recognition and authorization of different religious denominations and no preferential treatment was accorded to the Roman Catholic Church. The equality enjoyed by different religious denominations was reflected in the composition of the Peace Council, whose members represented a wide range of religious beliefs and denominations. The Constitution also guaranteed freedom of information, opinion and expression and the diffusion of ideas without prior authorization or censorship or other impediment. Newspapers, radio and television were entirely free to express opinions highly critical of the Government. Any limitations on freedom of expression was considered a crime. The right to strike had likewise been established in the

Constitution. Members of the armed forces and police on active duty could not vote or stand for election, but upon their retirement they regained their right to do so. No newspaper editors were being held under the anti-terrorism law, but some unofficial leaders of the Shining Path were being detained for the offence of advocacy of terrorism. The national intelligence system, which had been implicated in money laundering, had been abolished by the Congress. Communications continued to be inviolable even during states of emergency and wire-tapping had been stopped.

Non-discrimination, equality of the sexes before the law and protection of family and children

320. In relation to those issues, members wished to know how effective the measures designed to promote full equality of the sexes had been; how the treatment of aliens differed from that of citizens; what the law and practice were concerning the employment of minors; and whether men and women working under the same conditions received the same salaries; and what the percentage was of women serving in government departments, the legislature and the judiciary. Members also requested information concerning child prostitution and trafficking in women and children; the reported employment of 1 million children under the age of 14 in the country, child slavery in the Madre de Dios gold mines, and how the Government viewed such reports; and Peru's environmental protection policy.

321. Responding to the questions that had been raised, the representative noted that the Constitution did not allow for any discrimination on the basis of sex. The relevant statistics showed that government policies had had a positive impact on political participation by women, who had also made great strides in economic and social status. The Constitution provided for just remuneration under the same conditions for men and women, without distinction. There was currently one minister and some 15 to 20 women in the Chamber of Deputies and the Senate. Aliens could buy property only in border provinces. In general, there were some limits on the political rights of aliens when national security was threatened. Children in employment were protected by law and minimum age limits had been set for children employed in various industries. The Government was aware, however, that the economic and social conditions had forced many youths to work under illegal conditions and an ad hoc commission was currently reviewing the relevant legislation. Several voluntary programmes, which were partly subsidized by the Government, had recently begun to provide street children with food and shelter. Although child labour had once existed in the Madre de Dios gold mines, it had never amounted to slavery and had been abolished. The Government had also undertaken an ambitious project to establish a foundation for the welfare of all children in Peru. A chapter on crimes perpetrated against the environment and public health had been included in the new Penal Code.

Rights of persons belonging to minorities

322. With reference to that issue, members requested additional information concerning legislation to give effect to articles 34, 35 and 169 of the Constitution, as well as the relevant practices. They also wished to know what factors and difficulties had been encountered in implementing article 27 of the Covenant, including the situation of indigenous people in areas where production of and trade in drugs caused problems; what measures had been taken to ensure effective participation by minority groups in the political process; whether there was any minority representation in Congress; and what assistance had been given by the Government to the indigenous peoples who were caught

between the Shining Path's interest in drug production and the repressive activities carried out by the army and police.

323. In response to those questions, the representative of the State party said that the Constitution recognized the legal existence and capacity of the peasant and indigenous communities, who were autonomous in their administrative organization, community work and use of land, and that their land ownership, traditions and practices were respected by the Government. However, owing to the serious impact of terrorism and drug trafficking in those communities, government policies that aimed at ensuring minority participation had fallen short of expectations and additional activities were being undertaken. One of the objectives of the government strategy to combat drug trafficking was to enable indigenous communities in coca-growing regions to enter into negotiations with businesses interested in investing in other crops. Peasant communities could also organize politically.

324. In compliance with the decision adopted by the Committee at its 1148th meeting, the State party submitted a supplementary report dealing with events occurring subsequent to the consideration of the second periodic report at the Committee's forty-fourth session, in particular in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant.

325. Referring to the events that had taken place on 5 April 1992 and the ensuing state of emergency, members wished to know which of the rights protected under the Covenant were being suspended; how the independence of the judiciary was being ensured when all new judges were appointed by the President; what had been the benefit, if any, of the dissolution of Congress and the removal of judges; what measures were being taken to control the military and security forces; whether allegations of the crimes of violence, enforced disappearance and summary execution were investigated and the perpetrators punished; and whether habeas corpus was still in effect. Members also questioned the constitutionality of the steps taken by the President of Peru on 5 April 1992, which some saw as a coup d'état, and wished to know whether the Constitution was still in force; what the constitutional basis was for the reconstruction measures being taken; whether the relevant details regarding the state of emergency had been communicated to the Secretary-General; and what measures had been taken to alleviate hardships and to ensure implementation of the Covenant during the state of emergency.

326. In addition, members wished to know the basis for the conclusion, by the Government of Emergency and National Reconstruction, that a very high percentage of Peruvians had supported the measures taken on 5 April 1992. Further information was also sought on the disaster that had taken place in the Castro Castro Prison; the activities of paramilitary groups, rondas campesinas and peasant patrols; the house arrest of politicians after 5 April 1992; the register of detainees; violations of human rights by members of the military forces and whether any training had been provided to them on human rights; the jurisdiction and duties of the courts dealing with offences committed by juveniles; the position of former President Alan García and whether he would be allowed to return to Peru and to participate in the elections; restrictions on a citizen's right to participate in the political life of the State; the number of political prisoners; details of Decree-Law No. 25592 and the criteria for the selection of personnel for the newly formed Human Rights Council in Peru. Members also reiterated concerns that had been voiced earlier relating to such matters as the right to life, the role of the military courts, the need to combat terrorism other than by State terrorism, and,

more generally, the overall impact of the state of emergency on the implementation of the provisions of the Covenant.

327. In reply, the representative of the State party reassured the Committee that the Peruvian Government was committed to institutional normalization. She told members that the state of emergency, enforced in accordance with article 231 of the Constitution of Peru, was temporary and exceptional and had led to no derogation whatsoever from articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18 of the Covenant. Under article 231, the armed forces assumed control of internal order in the emergency zones. While the judiciary had been briefly suspended owing to its reorganization, it was functioning normally at all levels. The Attorney General's office had been more active in protecting human rights. Measures to reduce tension were under way, including a fund for compensation and development; education and training; a national food programme, and a five-year plan of action for children. Concerning enforced disappearances, the representative said that officials found guilty of such acts would be punished in accordance with the law. A nationwide network of registers of detainees was being set up to facilitate the dissemination of information to prosecutors as well as to human rights bodies. There was a separate register for complaints concerning disappearances. Excesses had been committed in implementing the anti-terrorist strategy but there was no permanent impunity for those who had perpetrated them. Members of the security forces, including the armed forces and the police, who had committed illegal acts were prosecuted and tried in military courts. Under the provisions of Decree-Law No. 25992, adopted on 26 June 1992, they could be sentenced to prison terms of up to 15 years. There were currently no political prisoners in Peru. Freedom of expression was fully respected and exercised. Habeas corpus had always been in force despite the suspension of the judiciary. There had been no recent increase in the number of declared disappearances.

328. The Constitution of Peru was still in force, although some of its provisions had been temporarily suspended. These, however, did not include any of the articles of the Covenant to which the supplementary report referred, namely articles 4, 6, 7, 9, 19 and 25. The incident at Castro Castro Prison had been sparked off by the transfer of women terrorists to another jail and had led to the deaths of some 40 persons, but it had not been the Government's policy to initiate violence. The rondas campesinas and peasant patrols were not armed by the military but were under government supervision. The former President of Peru, Mr. García, had gone into voluntary exile but could eventually return to Peru. He would be able to participate on the same basis as any other citizen - or indeed, political party, representative institution or organization - in the dialogue leading up to the elections for the new Democratic Constituent Congress. A high-level Commission was currently evaluating various proposals for improving the Constitution. Once the new Congress had been elected, it would be empowered to investigate the actions taken by the Government since 5 April 1992.

329. In response to other questions, the representative said that laws had been passed to provide training on human rights for the police and armed forces. The house arrest of politicians was a security measure to prevent the Shining Path or "Tupac Amaru" from taking advantage of the situation to incite uncontrollable commotions and disturbances. Offenders aged under 18 years were not sent to prison but to special institutions where they received guidance rather than punishment. There was, however, no juvenile court in Peru.

Concluding observations by individual members

330. Members of the Committee expressed appreciation of the State party's cooperation in submitting additional information and in complying with the Committee's requests for a supplementary report occasioned by the events that had taken place in Peru on 5 April 1992. While the representatives of the State party had made a commendable effort to respond to their queries, members regretted that their concerns had not been adequately addressed in the additional information that the Government had submitted, which left most of their questions unanswered. Members were not satisfied that their request for a supplementary report made at the committee's forty-fourth session had been met adequately. As a result, members found it difficult to form a comprehensive view of the human rights situation in Peru during the period under review and, in particular, since 5 April 1992.

331. Members found little information in the report itself relating to the period prior to 5 April 1992 that was positive. Subsequent developments in respect of the implementation of the rights and freedoms protected under the Covenant had, under the Government of Emergency and National Reconstruction, also not been encouraging. In particular, members were deeply concerned about terrorism, which appeared to be part of the daily life in Peru and was an obstacle to the application of the Covenant. Members condemned not only the activities of terrorist groups but also the excessive force and violence used by the military, the security forces and paramilitary and civilian groups. Members considered that combatting terrorism with arbitrary and excessive force could not be justified under any circumstances.

332. Another principal concern of members of the Committee related to the constitutional justification of the changes in Peru brought about by the events of 5 April 1992. It appeared that the ensuing suppression of the Constitution and dissolution of Congress had rendered the state of law uncertain, left the legal system and judiciary in disarray and resulted in the de facto suspension of habeas corpus. The Committee had reason to believe that, subsequent to 5 April 1992, many of the rights contained in the Covenant, including non-derogable rights specified under article 4, paragraph 2, had been derogated from.

333. Members also expressed concern about the house arrest of politicians and did not find the reasons for such detentions convincing. Women who had not been found guilty of an offence had been detained, together with their children. Those detentions could not be considered compatible with the rights guaranteed under the Covenant. Members expressed regret that no response had been received regarding follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely, communications Nos. 202 (1986) and 203 (1986), despite the request by its Special Rapporteur and repeated queries raised during the dialogue. Noting the intention of the Government of Peru to restore democracy and law and order, members of the Committee considered that, even during the current transitional period, the Government had to pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that the emergency circumstances warranted any derogations from such rights, they were to be strictly confined to the limitations specified under article 4 of the Covenant, and other States parties should be duly notified.

334. The representative of the State party assured the members of the Committee that their views

and concerns would be communicated to her Government but emphasized that Peru clearly had difficulties in complying with its obligations under the Covenant.

335. In concluding the consideration of the second periodic report and the additional information and supplementary report submitted by Peru, the Chairman joined the members of the Committee in thanking the delegation of the State party for its cooperation. Noting that he shared most of the observations and views expressed by the members, he stressed that the Committee's intentions were to assist the Government of Peru in applying the Covenant. He expressed the hope that the transitional period in Peru, during which the Government envisaged bringing about changes and reconstruction, would be brief. He hoped that the next periodic report, due in April 1993, would reflect the full implementation of the rights and freedoms under the Covenant.

Comments of the Committee

336. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

337. In accordance with that decision, at its 1175th meeting, held on 30 July 1992, the Committee adopted the following comments.

Introduction

338. The Committee expresses its appreciation of the Government of Peru's cooperation in continuing the dialogue during the consideration of the State party's second periodic report, and especially for providing the additional information on the report as offered by the delegation and for complying with the Committee's requests for a supplementary report relating to the situation in Peru after 5 April 1992. While the representatives of the State party have made a commendable effort to answer the numerous queries raised by members, the Committee regrets that its concerns have not been adequately addressed and that most of the questions were not answered satisfactorily, both in the oral presentations and in the addendum to the report. It notes with disappointment that the delegation's offer, made at the Committee's forty-fourth session, for some of the answers to be given in writing had not been acted upon. It also regrets that the State party did not provide information on problems relating to the Covenant's application as a consequence of the events of 5 April 1992, as was requested by the Committee. As a result, the Committee has found it difficult to form a comprehensive view of the human rights situation in Peru during the interval under review and, in particular, the period after 5 April 1992.

1. Positive aspects

339. The Committee welcomes the enactment, both before and after 5 April 1992, of legislation concerning procedures for registering complaints about extrajudicial detention and torture and allowing prosecutors to visit and monitor detention centres. The Committee also welcomes the legislative expression of culpability for all persons, including State offices, who engage in terrorism and in arbitrary and excessive use of force or who are responsible for disappearances. The Committee also regards as an important feature the creation of a new register of detainees and the

envisaged change in the composition of the National Council for Human Rights, in order that members of different government agencies whose activities affect the realm of human rights be represented therein. The Committee notes also the recent strong statements addressed to the army and police by the President of Peru concerning the importance of human rights.

2. Factors and difficulties impeding the application of the Covenant

340. The Committee finds little information in the report itself that relates to the period before 5 April 1992 and notes the Peruvian Government's view that much of the system existing before that date suffered from serious and profound flaws and needed reconstruction. Developments after 5 April 1992, when the Executive Branch seized all powers of the Peruvian State and constituted the Government of Emergency and National Reconstruction, have also not been encouraging. The Committee considers that the internal disorder and lawlessness in Peru, both before and after 5 April 1992, have obstructed the Covenant's effectiveness and, in some cases, rendered it inapplicable.

341. In this connection, the Committee observes that, during the entire period under examination, the assumption of power by military forces in the areas declared to be under a state of emergency has rendered ineffective the implementation of certain rights and freedoms guaranteed under the Covenant. The Government's acceptance of civilian vigilante groups that have full army support, notably the peasants' patrols (rondas campesinas) has worsened the situation, and it is clear that the Government is not in a position to rectify various abuses, including excessive and indiscriminate retaliatory responses to terrorist acts.

342. It remains to be seen if the changes brought about by the Government of Emergency and National Reconstruction will assist in the restoration of internal law and order in Peru. At the present time there is no evidence that this is the case. The concentration of all power in the hands of the Executive, the unilateral changes by the Government of Emergency and National Reconstruction in the Judiciary, and the serious disruptions to the legal system have, in the Committee's opinion, impeded the application of the Covenant in Peru.

3. Principal subjects of concern

343. The Committee expresses its deep concern about the terrorism that appears to be part of daily life in Peru. The Committee condemns the atrocities perpetrated by insurgent groups and is particularly disturbed by the scale of terrorist violence, which shows no consideration for the most basic human rights. Nevertheless, the Committee also censures excessive force and violence used by the military, the paramilitary, the police and armed civilian groups. It is troubled by the great number of complaints of extrajudicial executions and disappearances attributed to the security forces. In this respect, the Committee is deeply concerned about the absence of civilian control over the military and paramilitary groups, especially in the zones under their control, which in some cases amounts to impunity. In particular, the Committee regrets that those groups can be tried for acts of violence only under military law. The Committee considers that combatting terrorism with arbitrary and excessive State violence cannot be justified under any circumstances.

344. The Committee also expresses concern about the circumstances relating to the events of 5 April 1992. The terms of Decree-Law No. 25418, which transformed the Executive into a

Government of Emergency and National Reconstruction and dissolved other constitutional powers, has effectively suspended important parts of the Constitution and rendered the state of law uncertain; it has left the legal system and the judiciary in disarray; it has also resulted in the de facto suspension of habeas corpus and amparo and in the retroactive application of new legislation, especially that drawn up for specific cases.

345. The Committee has serious concerns about the application of the state of emergency in Peru. No formal notice of derogation relating to this period has been received by the Secretary-General. Procedural requirements have not been complied with. Although the Peruvian delegation told the Committee that no non-derogable right under article 4 had been derogated from, the Committee was not informed which articles of either the Covenant or the Constitution were regarded as suspended.

346. The temporary detention on 5 April 1992 of opposition leaders, mainly politicians, labour leaders and journalists, is also a cause for concern and the Committee does not find the reasons for such detentions convincing. Nor can the unavailability of certain rights to those and other persons, resulting from the events of 5 April 1992, be legally justified.

347. The Committee also observes with concern that many people, including women and children, are held for prolonged periods before trial in police cells. That is not compatible with the rights guaranteed under article 9 of the Covenant.

348. A further matter of concern related to follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely communications Nos. 202 (1986) and 203 (1986). The Committee regrets that no response has been received, despite the request by its Rapporteur on Follow-up and repeated queries during the dialogue.

4. Suggestions and recommendations

349. The Committee notes the intention of the Government of Peru to restore democracy and the rule of law. However, it considers that, especially during the current period in which the totality of the State's powers lies in the Executive, the Government must pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that emergency circumstances warrant derogation from such rights, they should be strictly confined to the limitations specified under article 4, and other States parties and the Committee should be duly notified of the facts and details of such derogations. The Committee hopes that the democratic system will be re-established as soon as possible. As elections for a Constituent Assembly have been scheduled for 22 November 1992, the Committee looks forward to seeing full implementation of the rights and freedoms under the Covenant in the near future.

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339. The Committee began its consideration of the third periodic report of Peru (CCPR/C/83/Add.1 and HRI/CORE/1/Add.43/Rev.1) at its 1519th to 1521st meetings (fifty-seventh session), on 18 and 19 July 1996, at which it dealt with urgent issues relating to the implementation of articles 2, 4, 6, 7, 9, 10, 14 and 27 of the Covenant. Further consideration of the report was adjourned to the fifty-eighth session of the Committee. In the light of the examination of the first part of the report and the comments made by its members, the Committee, at its 1528th meeting, on 25 July 1996, adopted the following preliminary comments and recommendations.

1. Introduction

340. The Committee welcomes the third periodic report submitted by the State party and welcomes the delegation's willingness to engage in a dialogue with the Committee. The Committee regrets, however, that although the report and the additional written and oral information provided by the delegation of Peru in answer to the questions raised by the Committee provided information on general legislative norms in Peru, it largely failed to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation. The Committee appreciated the presence of a high-level delegation which provided helpful information to the Committee in response to some of its questions and thus allowed it to obtain a somewhat clearer view of the overall human rights situation in the State party.

2. Factors and difficulties affecting the implementation of the Covenant

341. The Committee is aware that Peru has been plagued by terrorist activities, internal disorder and violence. The Committee affirms the right and duty of the State party to take firm measures to protect its population against terror. However, many of the measures adopted by the Government have frustrated implementation of the rights protected under the Covenant.

3. Positive aspects

342. The Committee notes that there seems to be a trend towards reducing the level of violence within the country, a significant diminution of the number of reported disappearances and the return of internally displaced persons to their residence. The Committee expresses the hope that that trend will lead to the full restoration of the rule of law and a return to normalcy in the political and social life of the nation. In this connection, it welcomes recent laws modifying the anti-terrorist laws to permit, *inter alia*, representation by human rights lawyers of multiple defendants suspected of terrorism and drug trafficking and cross-examination by lawyers of police and security personnel. The Committee also welcomes the decree modifying Decree Law 25,475, by which an accused person whose acquittal has been annulled by the Supreme Court, and so has to be retried, is no longer required automatically to be detained; the courts can place on him an obligation to appear for his new trial.

343. The Committee notes with satisfaction the establishment of the Office of the Public Ombudsman and the National Registry of Detainees. In this regard, it notes the delegation's

statement that the Office of the Public Ombudsman, though not yet fully functional, is already receiving and investigating complaints of human rights violations. It notes with satisfaction that, following the adoption of the 1993 Constitution, the members of the Constitutional Court have been appointed and the Court is now in position to exercise its functions.

344. The Committee further welcomes the adoption of Decree Law 26,447, which as of April 1995 raised the age of criminal responsibility from 15 to 18 years of age, as well as of Decree Law 25,398, which repealed the repentance law, and Decree Law 26,248, which restored habeas corpus.

345. With respect to article 27 of the Covenant, the Committee welcomes action taken to protect the rights of indigenous communities, including efforts to provide education in national and native languages, promote economic development and establish other mechanisms for their protection.

4. Principal subjects of concern

346. The Committee deplores the fact that its suggestions and recommendations contained in the concluding comments adopted at the end of the consideration of Peru's second periodic report and supplementary reports (CCPR/C/79/Add.8) have not been implemented.

347. The Committee is deeply concerned that the amnesty granted by Decree Law 26,479 on 14 June 1995 absolves from criminal responsibility and, as a consequence, from all forms of accountability, all military, police and civilian agents of the State who are accused, investigated, charged, processed or convicted for common and military crimes for acts occasioned by the "war against terrorism" from May 1980 until June 1995. It also makes it practically impossible for victims of human rights violations to institute successful legal action for compensation. Such an amnesty prevents appropriate investigation and punishment of perpetrators of past human rights violations, undermines efforts to establish respect for human rights, contributes to an atmosphere of impunity among perpetrators of human rights violations and constitutes a very serious impediment to efforts undertaken to consolidate democracy and promote respect for human rights and is thus in violation of article 2 of the Covenant. In this connection, the Committee reiterates its view, as expressed in its general comment No. 20 (44), that that type of amnesty is incompatible with the duty of States to investigate human rights violations, to guarantee freedom from such acts within their jurisdiction and to ensure that they do not occur in the future.

348. In addition, the Committee expresses serious concern in relation to the adoption of Decree Law 26,492 and Decree Law 26,6181, which purport to divest individuals of the right to have the legality of the Amnesty Law reviewed in courts. With regard to article 1 of that law, declaring that it does not undermine the international human rights obligations of the State, the Committee stresses that domestic legislation cannot modify a State party's international obligations under the Covenant.

349. The Committee notes with concern that provisions of article 4 of the Covenant have often been disregarded during the reporting period in that rights which are allowed to be derogated from only in time of an officially proclaimed state of emergency have been, and still are, restricted without the conditions of derogation being met.

350. The Committee expresses its deepest concern about Decree Law 25,475 and Decree Law 25,659, which seriously impair the protection of the rights contained in the Covenant for persons

accused of terrorism and contradicts in many respects the provisions of article 14 of the Covenant. Decree Law 25,475 contains a very broad definition of terrorism under which innocent persons have been and remain detained. It establishes a system of trial by "faceless judges", in which the defendants do not know who the judges are who are trying them and are denied public trials, and which places serious impediments, in law and in fact, to the possibility for defendants to prepare their defence and communicate with their lawyers. Under Decree Law 25,659, cases of treason are tried by military courts, regardless of whether the defendant is a civilian or a member of the military or security forces. In this connection, the Committee expresses its deep concern that persons accused of treason are being tried by the same military force that detained and charged them, that the members of the military courts are active duty officers, that most of them have not received any legal training and that there is no provision for sentences to be reviewed by a higher tribunal. Those shortcomings raise serious doubts about the independence and impartiality of the judges of military courts. The Committee emphasizes that trials of non-military persons should be conducted in civilian courts before an independent and impartial judiciary.

351. While taking note of bills aiming at granting pardon to some categories of persons convicted of terrorism and treason, the Committee is concerned at the absence of systematic review of the convictions pronounced as a result of trials before the military courts which have not met the requirement of a fair trial as specified in article 14 of the Covenant.

352. The Committee notes with concern that judges retire at the end of seven years and require re-certification for reappointment, a practice which tends to affect the independence of the judiciary by denying security of tenure.

353. The Committee notes with deep concern the extension of the death penalty in the 1993 Constitution to a wider range of activities than in the 1979 Constitution. The Committee recalls its general comment No. 6 (16), on article 6 of the Covenant, in which it indicated that States are obliged to abolish the death penalty for other than the most serious crimes. Extension of the scope of application of the death penalty raises questions as to compatibility with article 6.

354. The Committee expresses its deepest concern with respect to the cases of disappearances, summary executions, torture, ill-treatment and arbitrary arrest and detention by members of the army and security forces and the Government's failure to investigate fully those cases, to prosecute alleged offences, to punish those found guilty and to provide compensation to the victims and their families. The Committee is particularly concerned at the failure to resolve the high number of cases of past disappearances.

355. The Committee is deeply concerned by persistent reports of torture or cruel, inhuman or degrading treatment of persons detained under suspicion of involvement in terrorist activities or other criminal activities. It regrets the failure of the State party to provide the Committee with detailed information on the measures adopted to prevent torture and cruel, degrading or inhuman treatment and to punish those responsible. It draws attention to the legislation which permits incommunicado detention in certain cases. In this connection, the Committee reiterates its view, as expressed in its general comment No. 20 (44), on article 7 of the Covenant, that incommunicado detention is conducive to torture and that, consequently, the practice should be avoided.

356. The Committee notes with concern that provisions in article 2, paragraph 24 (f), of the Constitution, which permit preventive detention for up to 15 days in cases of terrorism, espionage and illicit drug-trafficking, as well as Decree Law 25,475, which authorizes extension of preventive detention in certain cases for up to 15 days, raise serious issues with regard to article 9 of the Covenant.

357. The Committee takes note of Decree Law 25,499 of 1992, according to which repentance of one's association with a terrorist organization and information concerning such organizations or which lead to the identification of other persons involved can lead to a reduction in sentence. The Committee is concerned that the law may have been used by individuals to denounce innocent persons in order to avoid prison sentences or to reduce their length, a concern that is supported by the fact that there are at least seven draft proposals - one of them from the Defensor Público and another from the Ministry of Justice - and a Decree Law 26,329 attempting to solve the problem of innocent people being prosecuted or having been convicted under the anti-terrorist laws.

5. Suggestions and recommendations

358. The Committee recommends that necessary steps be taken to restore the authority of the judiciary and give effect to the right to effective remedy under article 2 of the Covenant and thus overcome the prevailing atmosphere of impunity. In view of the fact that the Committee considers that the amnesty laws violate the Covenant, it recommends that the Government of Peru review and repeal those laws to the extent of such violations. In particular, it urges the Government to remedy the unacceptable consequences of those laws by, *inter alia*, establishing an effective system of compensation for the victims of human rights violations and taking the necessary steps to ensure that the perpetrators of those violations do not continue to hold government positions.

359. The Committee urges the State party to take immediate measures to release innocent prisoners and provide them with compensation and to systematically revise, on a non-discretionary basis, convictions handed down by the military tribunals in treason and terrorism cases, particularly convictions based on lack of identification documents or on evidence obtained in the application of the repentance law. The same applies to detainees awaiting trial.

360. The Committee urges the State party to take effective measures to investigate allegations of summary executions, disappearances, torture and ill-treatment, and arbitrary arrest and detention, to bring the perpetrators to justice, to punish them and to compensate victims. If allegations of such crimes have been made against members of the security forces, whether military or civilian, the investigations should be carried out by an impartial body that does not belong to the organization of the security forces themselves. Persons convicted of such crimes should be dismissed and, pending the outcome of the investigation, be suspended from office.

361. Urgent measures should be taken to strictly limit incommunicado detention. Provisions should be made in the Penal Code to criminalize acts that are committed for the purpose of inflicting pain, without prejudice as to whether those acts result in permanent injury.

362. The duration of preventive detention should be reasonable and any arrested person should be brought promptly before a judge.

363. The Committee particularly urges that the system of "faceless judges" be abolished and that public trials for all defendants, including those charged with terrorist-related activities, be reinstated immediately. The Government of Peru should ensure that all trials are conducted with full respect for the safeguards of fair trial provided by article 14 of the Covenant, including in particular the right to communicate with counsel and the right to have time and facilities to prepare the defense and the right to have the conviction reviewed.

364. In addition, the Committee recommends that the requirement for judges to be recertified be reviewed and replaced by a system of secure tenure and independent judicial supervision. During the reform process being undertaken in the judicial order, the Committee recommends that every effort be made to ensure the independence and impartiality of the judiciary.

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146. The Committee continued its consideration of Peru's third periodic report (CCPR/C/83/Add.1 and HRI/CORE/1/Add.43/Rev.1) at its 1547th and 1548th meetings (fifty-eighth session), held on 31 October 1996, and addressed questions left pending after the initial consideration of the report at its fifty-seventh session, at which urgent issues had been examined.^{3/} In the light of its further consideration of the report, it adopted the following observations and recommendations at its 1555th meeting, on 6 November 1996.

1. Introduction

147. The Committee welcomes the State party's third periodic report and is gratified by the continuation of the dialogue initiated with the delegation. However, the Committee regrets that the report does not contain sufficient reliable information on current legal provisions in Peru relating to a number of the rights covered in the Covenant or on the actual observance of human rights.

2. Factors and difficulties affecting the implementation of the Covenant

148. The Committee is aware that Peru has been affected by terrorist activities, internal disturbances and violence. In the Committee's view, although the State has both the right and the duty to adopt vigorous measures to protect its population against terrorism, such measures must not violate the rights protected by the Covenant.

3. Positive aspects

149. The Committee notes with satisfaction that the Constitutional Court and the Ombudsman's Office have commenced activities and that units specializing in constitutional matters and the rights of women have been set up within the Ombudsman's Office. It also takes a positive view of the establishment of the National Register of Detainees and Persons Sentenced to Custodial Sentences and the organization of training courses for lawyers and administrative personnel with the aim of improving the administration of justice.

150. The Committee also welcomes the establishment of the Standing Commission on the Rights of Women and of other organs designed to foster equality among men and women in Peru. It further notes the announcement of the establishment of the Ministry of Women and Human Development and expresses the hope that the Ministry will make a valuable contribution to ensuring that women in Peru fully enjoy the human rights enshrined in the Covenant. In the same connection, it appreciates Peru's ratification of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

^{3/} The Committee initiated its consideration of the third periodic report of Peru at its 1519th to 1521st meetings, on 18 and 19 July 1996, at which it dealt with urgent issues relating to the implementation of articles 2, 4, 6, 7, 9, 10, 14, and 27 of the Covenant (see Official Records of the General Assembly, Fifty-first Session, Supplement No. 40 (A/51/40), paras. 339-364).

151. The Committee welcomes with satisfaction the State party's report on the establishment of offices to provide advice and care in cases of violence against and abuse of children and adolescents and the programmes introduced to assist children as part of the measures to solve the problem of displaced persons. In this connection, the Committee commends the establishment of the National Technical Commission on Displaced Populations and the other measures being taken to solve the problems of displaced persons, and welcomes the fact that, according to the Government, 56 per cent of the peasant population have returned to their places of origin.

4. Principal subjects of concern

152. The Committee regrets that the constitutional status extended to the Covenant by Peru's 1979 Constitution has been substantially diminished, thereby reducing the protection previously enjoyed by individuals in Peru as regards the rights enshrined in the Covenant.

153. The Committee once again deplores the fact that Peru has ignored both the concerns expressed by the Committee in the observations adopted when it concluded its consideration of the first part of Peru's third periodic report and the suggestions and recommendations made in those same observations, arguing that Peru is entitled to give precedence to considerations of security or domestic policy over its obligations under the Covenant. The Committee considers that, in conformity with international law, article 1 of the Covenant does not authorize the State to adopt a new Constitution that may be incompatible with its other obligations under the Covenant. The Constitution is part of the legal order of the State and as such may not be invoked as grounds for exemption from compliance with an international obligation freely entered into by the State.

154. The Committee in particular deplores the fact that its recommendations relating to the amnesty laws, made in paragraph 358 of its 1996 report, have not been followed and that no effective remedy is available to allow the victims of human rights violations by State agents to claim compensation. It also regrets the lack of information on the fate of the recommendations made in paragraphs 360, 361 and 364 and the failure to respond to the recommendation made in paragraph 362 of its 1996 report.

155. The Committee takes note of the measures adopted by Peru to pardon persons convicted of terrorism. Notwithstanding its satisfaction at the release of 69 persons, the Committee considers that the pardon does not provide full redress to the victims of trials conducted without regard for due process of law, and it repeats the recommendation made in paragraph 359 of its 1996 report, which includes the need to establish an effective mechanism, at the initiative of the State, to revise all the convictions handed down by the military tribunals in treason and terrorism cases.

156. The Committee regrets the fact that Peru has not only failed to take measures in response to the recommendation made in paragraph 363 of its 1996 report, but has on the contrary extended, only a few days before the second part of the report was considered, the system of "faceless judges". The Committee expresses its profound concern at this situation, which undermines the judicial system and will again lead to the conviction of innocent persons without a proper trial.

157. The Committee appreciates the information provided by the State on communications Nos. 202/1986, 203/1986, 263/1987 and 309/1988, which are still pending, but regrets that the State's

efforts have not led to proper redress for the victims. At the same time, the Committee deplores the lack of information on the observance of Act No. 23.506, ordering immediate compliance with the Committee's observations through the procedure employed to enforce judgements handed down by national courts against the State.

158. The Committee regrets the lack of full and precise information on the legal status of women and on their enjoyment of the rights enshrined in the Covenant, particularly as regards their legal capacity, the frequency of violence against and sexual abuse of female detainees or prisoners, legal and practical restrictions in the labour sphere and the impact of recent laws and programmes designed to solve the problem of violence against women.

159. The Committee expresses its concern about the existence of a number of provisions of the Civil Code that discriminate against women, such as the difference in the minimum age required for matrimony and the fact that single mothers under 16 years of age lack legal capacity to recognize their children. This gives rise to problems of compatibility between Peruvian legislation and articles 3, 23, 24 and 26 of the Covenant.

160. The Committee notes with concern that the law still contains a provision exempting a rapist from punishment if he marries his victim and another which classifies rape as an offence prosecutable privately. The Committee is also concerned that abortion gives rise to a criminal penalty even if a woman is pregnant as a result of rape, and that clandestine abortions are the main cause of maternal mortality. Those provisions not only mean that women are subject to inhumane treatment but are possibly incompatible with articles 3, 6 and 7 of the Covenant.

161. The Committee notes with concern that when cases that might lead to a divorce are heard (physical or mental ill-treatment, serious injury and dishonourable conduct), the law instructs judges to take into consideration the education, habits and conduct of both spouses, a requirement that might easily lead to discrimination against women from the lower socio-economic strata.

162. In the same connection, the Committee is concerned that in Peru socio-economic criteria are used to group convicted and un-convicted prisoners, and it deplores the lack of information on the exact significance of this policy, as well as the lack, in general, of detailed information on conditions of detention to enable it to assess their compatibility with article 10 of the Covenant.

163. The Committee remains deeply concerned about the power of the police to decide to hold a person incommunicado for up to two weeks.

5. Suggestions and recommendations

164. The Committee recommends that the necessary legal measures be taken to ensure compliance with the obligations to respect and guarantee the rights recognized in the Covenant, in conformity with its article 2, paragraph 1.

165. The Committee reiterates the need for Peru to consider adopting effective measures in the fields referred to by the recommendations of the Committee in the observations it adopted on completion of its consideration of the first part of the State party's third periodic report. (See paras.

358-364 of the Committee's 1996 report.)

166. Regarding communications No. 202/1986, 203/1986, 263/1987 and 309/1988, the Committee again draws Peru's attention to the fact that, by acceding to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, in accordance with the provisions of article 2 of the Covenant, the State party undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and applicable remedy if a violation is found to have occurred; accordingly, the Committee requests the State to submit to it within 90 days information on the measures adopted to implement the Committee's decisions.

167. The Committee recommends that the provisions of the Civil and Penal Codes should be revised in the light of the obligations laid down in the Covenant, and in particular in its articles 3 and 26. Peru must ensure that laws relating to rape, sexual abuse and violence against women provide women with effective protection and must take the necessary measures to ensure that women do not risk their life because of the existence of restrictive legal provisions on abortion.

168. The Committee recommends that the Government should adopt the legislation necessary to allow political parties to operate effectively and democratically and fully to implement the rights protected by articles 22 and 25 of the Covenant.

169. The Committee recommends that education programmes be established for children and for the community in order to develop a thorough understanding of the principles of respect for human rights and of tolerance and of the role those principles play in the development of a sound and stable democracy.

170. The Committee hopes that, in its next periodic report, Peru will include information on the progress made to extend to women in Peru full enjoyment of the rights enshrined in the Covenant, particularly in the spheres with which the Committee is concerned (see paras. 158-161 above) together with detailed information on how it is complying with the provisions of article 10 of the Covenant.

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76. Peru

(1) The Committee considered the fourth periodic report of Peru (CCPR/C/PER/98/4), at its 1879th, 1880th and 1881st meetings, held on 23 and 24 October 2000 and, at the 1892nd meeting, held on 1 November 2000, adopted the following concluding observations.

Introduction

(2) The Committee welcomes with satisfaction the fourth periodic report submitted by the State party, as well as the comments on the concluding observations and recommendations of the Committee on the third periodic report (CCPR/C/83/Add.4). It also appreciates the delegation's willingness to establish a dialogue with it. However, it regrets the fact that the report does not contain relevant statistical data and does not deal adequately with the difficulties the State party encounters in implementing the Covenant.

Positive aspects

(3) The Committee welcomed the announcement of the holding of early presidential elections in 2001 and hopes that they will take place in an atmosphere of transparency and freedom, in accordance with international standards.

(4) The Committee welcomes with satisfaction the fact that "faceless" courts have been abolished as the Committee recommended (CCPR/C/79/Add.67); the fact that the offence of terrorism has been transferred from the jurisdiction of the military courts to that of the ordinary criminal courts; and the fact that the state of emergency affecting areas of the national territory has been rescinded.

(5) The Committee regards it as a positive sign that, under Act No. 26,926 of 21 February 1998, torture has been characterized as an offence in the chapter of the Penal Code on crimes against humanity.

(6) In the Committee's opinion, another favourable development is that machinery has been established for the protection of women, such as the Office of the Ombudsman Specializing in Women's Rights within the Ombudsman's Office and the Congressional Commission on Women and Human Development. The Committee also expresses its satisfaction with the adoption of civil and criminal legislation recognizing the rights of women.

Principal subjects of concern and recommendations

(7) The Committee again regrets the fact that Peru has not taken account of the recommendations made following the consideration of the third periodic report (CCPR/C/79/Add.67, paras. 20-26 and CCPR/C/79/Add.72, paras. 19-25). Many of the subjects of concern referred to at that time continue to be matters of concern at present.

(8) The Committee considers that, despite transitional provision 4 of the Constitution of Peru stating that the rules relating to the rights and freedoms which the Constitution recognizes are interpreted in accordance with the International Covenant on Civil and Political Rights and other relevant treaties ratified by Peru, the rank of the Covenant in the internal legal system is not clear and the rights recognized in it do not appear to be respected.

The Committee recommends that the necessary legal measures should be taken to guarantee the rights recognized in the Covenant, in accordance with article 2, paragraph 1, of the Covenant.

(9) The Committee deplores the fact that its recommendations on the 1995 amnesty laws have not been followed and reiterates that these laws are an obstacle to the investigation and punishment of the persons responsible for offences committed in the past, contrary to article 2 of the Covenant. The Committee is deeply concerned about recent information stating that the Government is sponsoring a new general amnesty act as a prerequisite for the holding of elections.

The Committee again recommends that the State party should review and repeal the 1995 amnesty laws, which help create an atmosphere of impunity. The Committee urges the State party to refrain from adopting a new amnesty act.

(10) The Committee expresses its concern about the fact that the judiciary is still being reorganized in Peru and that the existence of the Executive Judiciary Commission, which has broad powers, leads to interference by the Executive and undermines the independence of the judiciary and the rule of law. One of the consequences of this reorganization is the large number of temporary judges. The Committee is especially concerned about the dismissal of the three Constitutional Court judges, Delia Revoredo Marsano de Mur, Manuel Aguirre Roca and Guillermo Rey Terry, by the Congress in 1997. An impartial and independent system of justice is essential for compliance with a number of articles of the Covenant, notably article 14.

(a) The State party must take the necessary measures to regularize the situation of the temporary judges, who may be dismissed peremptorily, and to guarantee their job security.

(b) The State party must reinstate the three Constitutional Court judges in their posts in order to normalize the Court.

(c) The State party must establish a mechanism guaranteed by law that ensures the independence and impartiality of judges and eliminates the possibility of the Executive interfering in the Judiciary.

(11) The Committee appreciates the fact that Peru has released some of the persons convicted of the crime of terrorism on insufficient evidence and has pardoned them. However, it states once again that a pardon does not constitute full compensation for the victims of proceedings in which the rules of due process have been breached and in which innocent persons have been found guilty.

(a) The State party must establish an effective mechanism for the review of all sentences imposed by the military courts for the offences of terrorism and treason, which are defined in terms that do not clearly state which conduct is punishable.

(b) The State party must also release immediately all persons whose situation has now been decided

by the Pardons Board.

(12) The Committee deplores the fact that the military courts continue to have jurisdiction over civilians accused of treason, who are tried without the guarantees provided for in article 14 of the Covenant.

The Committee refers in this context to its General Comment No. 13 on article 14 and emphasizes that the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice.

(13) As indicated during the consideration of the third periodic report, the Committee considers that detention for up to 15 days in cases of terrorism, drug trafficking and espionage does not comply with article 9 of the Covenant.

It draws attention to the State party's obligation to amend its legislation so that any person who has been detained may be placed without delay at the disposal of the judiciary.

(14) The Committee expresses its concern about poor conditions of detention, particularly in Lurigancho prison in Lima and the maximum security prisons of Yanamayo, in Puno, and Challapalca, in Tacna (high-altitude prisons where visiting rights, *inter alia*, are far from easy to exercise owing to the difficulty family members have in reaching them). Conditions in these prisons do not comply with article 10 of the Covenant.

The Committee urges the State party to take the necessary measures to improve prison conditions in Peru. In particular, it urges the State party to reduce the prison population of Lurigancho prison and close down Yanamayo and Challapalca prisons.

(15) The Committee expresses its concern about the continuing practice of one year's isolation for convicted and unconvicted prisoners, in accordance with the regulations on the living conditions and progressive treatment of prisoners who are difficult to rehabilitate, those awaiting trial or sentenced for ordinary offences or for terrorism or treason. Such isolation may be extended when the person concerned breaks a rule, however minor.

The Committee urges the State party to review this practice, which affects the physical and mental health of persons deprived of their liberty and constitutes cruel, inhuman or degrading treatment or punishment, thus hampering full compliance with articles 7 and 10 of the Covenant.

(16) The Committee notes with concern that there is a growing number of complaints of systematic harassment and death threats against journalists intended to undermine freedom of expression. The Committee requests the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression, to investigate all complaints which have been filed and to bring the persons responsible to justice.

(17) The Committee deplores the methods used by Peru to take control of communications media away from persons critical of the Government, including stripping one of them of his nationality.

The Committee requests the State party to eliminate these situations, which affect freedom of expression, in accordance with article 19 of the Covenant, and to make effective remedies available to those concerned.

(18) The Committee deplores the fact that, of the four opposition members of Parliament who were victims of repeated acts of intimidation and about whom it requested reports from the Government, vague replies were given only about Mr. Gustavo Molme Llon, who has since died; no explanation was given about the three others, Javier Díez Canseco, Henry Pease García, Jorge del Castillo and some of their co-workers, and not a single reference was made to the investigations conducted in order to find the persons responsible.

The intimidation of members of Parliament, which prevents them from representing their constituents and exercising their functions freely and independently, must cease immediately and acts of intimidation must be investigated and the persons responsible punished.

(19) The Committee considers the effective implementation of laws safeguarding human rights to be of the greatest importance.

The Committee requests the State party, in its next report, to provide detailed information on the effective implementation of the new civil and criminal legislation recognizing the rights of women.

(20) It is a matter of concern that abortion continues to be subject to criminal penalties, even when pregnancy is the result of rape. Clandestine abortion continues to be the main cause of maternal mortality in Peru.

The Committee once again states that these provisions are incompatible with articles 3, 6 and 7 of the Covenant and recommends that the legislation should be amended to establish exceptions to the prohibition and punishment of abortion.

(21) The Committee is concerned about recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors.

The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.

(22) The Committee sets 31 October 2003 as the date for the submission of the fifth periodic report of Peru. It requests that the text of the fourth periodic report of the State party and the present concluding observations should be published and widely disseminated in Peru and that the next periodic report should be made available to civil society and non-governmental organizations working in Peru.