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HUMAN RIGHTS COMMITTEE

Fifty-eighth session

SUMMARY RECORD OF THE 1547th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 31 October 1996, at 10 a.m.

Chairman: Mr. EL SHAFEI

later: Mr. AGUILAR URBINA

later: Mr. EL SHAFEI

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GE.96-18835 (E)

The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Peru (CCPR/C/83/Add.1, HRI/CORE/1/Add.43/Rev.1, CCPR/C/79/Add.67, M/CCPR/C/57/LST/PER/4) (continued)

1. At the invitation of the Chairman, Mr. Hermoza-Moya, Mr. Urrutía, Mr. Reyes-Morales, Mr. Chavez and Mr. Pérez del Solar (Peru) took places at the Committee table.

2. The CHAIRMAN welcomed the Peruvian delegation, which was headed by the Minister of Justice of Peru. The Committee had begun its consideration of the third periodic report of Peru at its fifty-seventh session, when it had heard the Peruvian delegation's replies to part I of the list of issues (M/CCPR/C/57/LST/PER/4), and prepared preliminary observations on that part of its consideration of the report (CCPR/C/79/Add.67). At its current session it would therefore continue its consideration of the third periodic report. It would first hear the Peruvian delegation's replies to the preliminary observations prepared by the Committee at its fifty-seventh session.

3. Mr. HERMOZA-MOYA (Peru) said that his Government had asked him, in his capacity as Minister of Justice, to deliver a statement on the preliminary observations (CCPR/C/79/Add.67) prepared by the Committee following the first part of its consideration of Peru's periodic report. That attested to the importance his Government attached to dialogue with the Committee.

4. In connection with the positive aspects of the human rights situation in Peru noted by the Committee (CCPR/C/79/Add.67, paras. 4 to 7), certain additional information might be of interest to the Committee. First, the new agencies for the administration of justice established by the 1993 Constitution had begun operating in the past few months, and the Constitutional Court and the Office of the Ombudsman were fully operational. The reform of the judiciary had also been strengthened in order to guarantee the fully independent, effective, honest and prompt administration of justice with due respect for the guarantees of due process.

5. The reform and restructuring of the judiciary had resulted from a diagnosis of the situation which had indicated that the judicial sector lacked personnel with sound training and appropriate qualifications and that the relevant infrastructure was unsuitable, or in poor condition. The purpose of the reform was to restructure the administration and provide it with management competence and suitable personnel, who would be given the resources and services needed to effectively perform their duties vis-à-vis the public and the judicial sector. The first measures taken had included training courses in 12 Peruvian universities for lawyers and administrative staff, the reorganization of the files of the High Court in Lima, and the establishment of a new convictions register and a national register of unconvicted prisoners (Registro Nacional de Inculpados en Cárcel), in the context of agreements with UNDP, the National Penitentiary Institute, the Office of the Ombudsman and the Andean Commission of Jurists.

6. The reform would also involve the establishment of a Judicial Coordination Council responsible for developing general management policy aimed at improving the administration of justice; it comprised representatives of the judiciary, the Public Prosecutor's Office and the National Council of the Judiciary. The task of the new Council was to organize ancillary judicial institutions, modernize the administration of justice and coordinate the activities of all institutions in the system.

7. The most important progress to report, however, concerned the activities of the Ombudsman, whose office included specialized branches for constitutional matters and women's rights, and whose activities had been decentralized through the establishment of provincial offices, which guaranteed citizens effective examination of the complaints and remedies they filed with the Office. The Ombudsman also played an important role in the special commission set up to study and propose to the President of the Republic, on an exceptional basis, the granting of a reduction of sentence or pardon to anyone charged or convicted on the basis of insufficient evidence for offences of terrorism or treason, if there were reasons for believing that the individual concerned had not been involved in terrorist activities (hereinafter referred to as the Special Commission on Pardons).

8. His Government had paid particular heed to the Committee's recommendation that it should release certain prisoners whose legal situation had been of concern to certain non-governmental human rights organizations. He, as Minister of Justice, had promised to look into that question personally and take appropriate measures. In that connection, the Committee had also recommended (CCPR/C/79/Add.67, para. 21) that the State party should systematically review, “on a non-discretionary basis, convictions handed down by the military tribunals in treason and terrorism cases”. Careful thought had been given to that suggestion, since adopting it would have involved a lengthy judicial procedure during which the convicted person could not have been released in any event. The Government had finally opted for a two-tier solution: first, a pardon (reduced sentence) was granted to people who requested one because they considered themselves to have been convicted on the basis of insufficient evidence, and secondly, after the pardon was granted, the person released was entitled to initiate review proceedings, in accordance with the legislation in force, with a view to establishing his innocence and obtaining compensation where appropriate.

9. For that purpose Act No. 26,655 had been passed, establishing the Special Commission on Pardons, which was presided over by the Ombudsman and whose members included a priest, representing the President of the Republic, and the Minister of Justice himself. After studying the Commission's reports, the President of the Republic had granted 64 pardons to date; 200 cases were pending, and more might be added since the governors of prisons and other institutions were empowered to file applications for person's unable to do so themselves. Those were the results of the Special Commission's first two months of work during an initial mandate of six months extendable for a further six months.

10. It should be made clear that a pardon did not mean that a new or newly discovered fact showed conclusively that there had been a miscarriage of justice, within the meaning of article 14, paragraph 6, of the Covenant. The

Special Commission acted essentially for humanitarian reasons and in the interests of genuine national reconciliation. Identifying a miscarriage of justice was within the exclusive competence of the courts, and it was for a person who had been pardoned and considered himself to be totally innocent to initiate the appropriate proceedings for a review of his trial. The Peruvian authorities were aware that that procedure was a lengthy one, but legislative reforms were planned to shorten the review procedure. One of the effects of the new procedure would be the payment of compensation; his Government would pay compensation to anyone entitled thereto provided that the responsibility of the State had been duly established by the competent court.

11. Turning to the section on the principal subjects of concern in the Committee's preliminary observations (CCPR/C/79/Add.67, paras. 8-19), his delegation had noted the concern expressed in paragraph 9, which stated that the amnesty law made it practically impossible for victims of human rights violations to institute successful legal action for compensation, and that such an amnesty prevented appropriate investigations and contributed to an atmosphere of impunity. He repeated that the amnesty granted by Congress had been an exceptional and essentially political measure through which the State had renounced its power to institute prosecution, for overriding reasons of public interest. Hence the amnesty law provided exclusively for exemption from criminal responsibility and did not in any circumstances affect civil or administrative responsibility. Criminal proceedings did not protect victims or redress injuries unless the judgement ordered payment of compensation to the family, on an accessory basis, in addition to the criminal penalties. If the judgement did not order payment of compensation, however, or if it had not been possible to try the alleged culprit, Peruvian legislation provided adequate and effective remedies for compensating the injured individuals or their families. In that respect, it was his Government's opinion that the Committee had reached a highly subjective conclusion in prejudging the chances of instituting successful legal action to seek compensation.

12. The following was a good example of the Peruvian authorities' willingness to grant compensation: in the case of the La Cantuta University students who had been reported missing, the amnesty laws had not prevented the victims' heirs from being paid the compensation set by the court. After the amnesty laws had entered into force, the Inter-American Court of Human Rights had handed down a judgement ordering Peru to compensate the families of the victims in the El Frontón case, for which criminal responsibility was nevertheless covered by the effects of the amnesty. But the compensation in question would be paid. In that case Peru respected the principle invoked by the Court, namely that the international protection of human rights must not be confused with criminal justice and that the goal of international human rights law was not to punish those guilty of violating human rights, but to protect the victims and provide compensation, by the States responsible for the acts in question, for the injuries attributable to those violations.

13. As to the Committee's statement that Decree-Laws Nos. 26,492 and 26,479 divested individuals of the right to have the legality of the amnesty law reviewed in courts (CCPR/C/79/Add.67, para. 10), it should first be made clear that the instruments in question were laws enacted by Congress and not decree laws issued by the Executive. The possibility of contesting a law before the Constitutional Court was expressly provided for in article 203 of the

Constitution and could be exercised, in particular, by the Ombudsman, 30 congressional deputies, professional associations in their fields, such as the Bar Association, or a minimum of 5,000 citizens. Act No. 26,618 of 8 June 1996 shortened the time-limit for initiating an action of unconstitutionality from six years to six months following publication of the law. The purpose of that provision was obviously not to divest citizens of the right to challenge the legality of the amnesty law in the courts since, by virtue of the principle of non-retroactivity, Act No. 26,618 of 8 June 1996 would not apply. That having been said, although the Constitutional Court was already functioning, no action of unconstitutionality had been initiated against the so-called amnesty laws.

14. Peruvian legislation contained provisions for the protection of the rights of the individual during a state of emergency (see CCPR/C/79/Add.67, para. 11). Article 200 of the Constitution stipulated that the remedies of habeas corpus and amparo should not be suspended during a state of emergency. It was for the judge to consider whether the restrictions were reasonable and proportional. Because of the hierarchy of norms, that constitutional provision tacitly repealed article 29 of Act No. 25,398, which limited the exercise of habeas corpus remedies during a state of emergency. States of emergency had a constitutional basis in internal law, and were compatible with international instruments such as the American Convention on Human Rights and the International Covenant on Civil and Political Rights as far as the effective protection of human rights was concerned. There were rules and procedures for facilitating operations in areas where a state of emergency had been proclaimed, while at the same time ensuring respect for human rights, with, in particular, the possibility of visits by officials from the Public Prosecutor's Office, the judiciary and the International Red Cross. Proclamation of a state of emergency did not suspend the activities of the Public Prosecutor or the citizens' right to address themselves to him personally, or indeed the activity of the Ombudsman.

15. The maintenance of a state of emergency was justified because terrorist acts, although now far fewer in number, had not been completely eliminated. Now that its goal was in sight, it would be extremely risky for Peru to deprive itself of one of the basic components of its strategy for combating subversion, which had yielded such good results in so short a time.

16. In response to the statement that a state of emergency was a threat to human rights, it should be pointed out that, paradoxically, during the period when the largest area had been declared to be under a state of emergency and strict measures had been taken on an exceptional and transitional basis, in the legal sphere, the number of complaints filed for human rights violations in Peru decreased considerably. The Committee itself acknowledged that fact in paragraph 4 of its preliminary observations, noting a significant decrease in the number of reported disappearances and the return of internally displaced persons to their residence.

17. Any isolated cases of torture, cruel, inhuman or degrading treatment, or forced or involuntary disappearances which still occurred and constituted acts duly categorized in criminal legislation could be the subject of complaints to the Public Prosecutor, whose functions had not been restricted by the anti-terrorist legislation and who could visit detention centres at any time

as part of his duties of inspection and supervision. Peru was one of the few countries in the region whose legislation included the offence of enforced disappearance. The Commission on Human Rights Working Group on arbitrary detention had been invited to visit Peru in January 1997; his delegation would simply await the conclusions which the Group would be submitting after its visit and which would be available to the Committee for consultation.

18. Another emergency institution that remained in force was the so-called "faceless judges" and the practice of trying civilians by military courts. It was true that defendants in such cases did not know who was trying them, but that measure had been taken out of a desire to protect judges and guarantee their independence. The Working Group on arbitrary detention had acknowledged as much in its report to the Commission on Human Rights (E/CN.4/1996/40, para. 118). The Working Group's comment, namely that the practice of anonymous judges in many instances had also led to a loss of judicial guarantees, was of a general nature and did not imply that that was the case in Peru; neither did it discredit the arguments in support of a procedure that was effective in other respects. He acknowledged, however, that that situation was neither ideal nor desirable; it had been made necessary by extremely painful and exceptional circumstances. He personally hoped that that procedure would come to an end within a reasonable period, when security conditions had been improved and peace restored. His position was that in ordinary circumstances civilians should be tried by civilian judges; but Peru was in an emergency situation, clearly defined by law and properly characterized, which meant that due respect was given to the principles that no one might be tried by a tribunal that had not been established by law or for an act which had not expressly constituted a criminal offence at the time when it had been committed, those principles being set forth in articles 14 and 15 of the Covenant.

19. The Committee had mentioned the military judges' lack of legal training (CCPR/C/79/Add.67, para. 12). Although there were a few military court judges who were not professional judges, most had received legal training. They comprised not only officers who had studied law and obtained a law degree while serving in the military, but also, in most cases, lawyers who had entered the military justice system in accordance with the law. The military courts respected the rules laid down in article 14, paragraph 3, of the Covenant on procedural guarantees. The fact that trials were not public was authorized by article 14, paragraph 1, of the Covenant, for reasons of national security. Verdicts that were not public were exceptions, the suspension of the relevant provisions of article 14 of the Covenant not being prohibited under article 4. It was inaccurate to say that the Code of Military Justice did not allow requests for convictions to be reviewed by a higher court; it was possible to file a special application for judicial review, which could be lodged by the convicted person, his lawyer or his family. Such a case had already arisen: the remedies had been granted and the individuals in question released. Even when an appeal was dismissed, military justice provided for the application for judicial review to be resubmitted, as had already been done.

20. It could not be presumed that military judges were biased, any more than any judge could be presumed dishonest. To say so would imply that the independence and impartiality of any military judge who tried his

comrades-in-arms would be influenced by rank. If that was the case, all military courts should be abolished for failing to provide guarantees of the fundamental right of everyone, including military personnel, to an impartial trial.

21. The Committee had further stated that it was deeply concerned at the extension of the scope of the death penalty (CCPR/C/79/Add.67, para. 15). Article 140 of the 1993 Constitution defined the cases in which the death penalty could be imposed: treason in wartime and terrorism, in accordance with the laws and treaties to which Peru was a party. Although the new offence of terrorism had been made necessary by the extreme violence practised by the terrorist groups that constitutional principle had not been developed in material law; hence it was not applicable to Peru and had in fact not been applied. If a specific case arose where a death sentence was imposed for terrorism, it could not be carried out; that would be contrary to the treaties to which Peru was a party, as stipulated in article 140 of the Constitution. One of those treaties was the Pact of San José, under which the death penalty could not be pronounced for offences to which it had not applied at the time of signature of the treaty.

22. Referring to the Committee's concerns at Peru's situation with respect to the Covenant, he said the Committee's objections regarding the death penalty and detention (CCPR/C/79/Add.67, para. 18) were based on the principle that a State could not invoke its legislation to exempt itself from fulfilling an international obligation. The Peruvian authorities wondered, however, whether it was possible for the exercise of a right laid down in the Covenant to undermine another right also laid down in that instrument. For example, the exercise of the right to self-determination, under which peoples chose their political status (Covenant, art. 1) and the Peruvian people had acquired a Constitution, might enter into conflict with other articles of the Covenant; as the Committee stated, there was incompatibility between article 6 of the Covenant and Peru's constitutional provisions governing the death penalty, and between article 9 and the provisions governing detention.

23. The foregoing argument was supported by article 2 of the Covenant, which clearly stipulated that each State party should take steps to guarantee the rights set forth in the Covenant “in accordance with its constitutional processes”. In other words, the implementation of the Covenant should always be subject to the constitutional provision or, at the very least, remain on a strictly equal footing with it. For that reason, the Peruvian authorities could not accept an interpretation of the Covenant that limited the exercise of the right set forth in article 1. In any event, thought should be given to what happened when a constitution adopted after a given treaty entered into conflict with certain provisions of that treaty. Was that a case where internal law could not be invoked against the treaty? Perhaps an exchange of views should be held on that question, in order to find a solution to an unusual situation.

24. The CHAIRMAN thanked the Peruvian delegation and invited it to reply to the questions in part II of the list of issues (M/CCPR/C/57/LST/PER/4), which it had not been possible to discuss at the fifty-seventh session.

25. Mr. CHAVEZ (Peru) observed that, at the fifty-seventh session, his delegation had provided the Committee with a document containing detailed replies to all the questions. His delegation would be happy to reply to observations and further questions by members of the Committee.

26. Mr. Aguilar Urbina took the Chair.

27. Mr. MAVROMMATIS said he believed there had been a misunderstanding: the Peruvian delegation appeared to have understood that the Committee would consider the document mentioned as constituting a response to the questions in the list of issues. However - and the Committee would naturally have told the delegation as much if it had realized that the delegation was unaware of the procedure - it was not the Committee's practice to accept as replies to its questions a document which was drafted in a single language and consequently could not be read by all. If the delegation had available a copy of the document it had prepared for the fifty-seventh session, the best course would be for a representative to read out the replies to each question.

28. Mr. HERMOZA-MOYA (Peru) said that, if the Committee so wished, he could read out the replies contained in the document.

29. It was so decided.

30. Mr. HERMOZA-MOYA (Peru), referring to part II, question (a), of the list of issues, which asked for clarification of the status of the Covenant within domestic law, said that under the 1979 Constitution treaties had had higher authority than laws and human rights treaties had had constitutional status. Today, under the 1993 Constitution, all treaties ranked as statutes. It was stipulated at the end of the Constitution, however, that the rules relating to the rights and freedoms recognized by the Constitution were interpreted in accordance with the Universal Declaration of Human Rights and the international human rights treaties and agreements ratified by Peru.

31. Question (b) asked the Government to provide information on the action taken by Peru on four communications (Nos. 202/1986, 203/1986, 263/1987 and 303/1988) transmitted by Peruvian citizens under the Optional Protocol. The secretariat of the Human Rights Committee had just received four information notes prepared by the National Council for Human Rights reporting the current status of the cases covered by those four communications.

32. Question (c) requested information on the functions of the National Council for Human Rights, the National Human Rights Committee, the Ombudsman and the Commission of Human Rights of the Democratic Constituent Congress.

33. The National Council for Human Rights, whose role was to promote and coordinate activities for the protection of fundamental human rights, publicize them and provide advice in that area, had been given an executive secretariat responsible for carrying out the acts and measures decided on by the Council. New rules of procedure had been established for the Council in a decree dated 3 April 1995. Among other functions, the Council was responsible for advising the executive on human rights matters, preparing human rights

policy and proposing it to the executive, promoting, coordinating and undertaking studies and research on the promotion and protection of human rights and proposing legislation or amendments to the extent that they concerned human rights.

34. The National Human Rights Committee had been established in response to a perceived need for a body within the Ministry of the Interior to centralize human rights policies. It was responsible for guiding and supervising acts by the political authorities and the police and acting as a link with all sectors implementing national human rights policies; it also played an information role. It reported directly to the Minister of the Interior on activities undertaken and kept him informed at all times. It had a permanent secretariat.

35. The Office of the Ombudsman was governed by Act No. 26,520, empowering the Ombudsman to open inquiries into any act or decision by the administration which might undermine fundamental rights, to file actions of unconstitutionality with the Constitutional Court, and remedies of amparo, habeas corpus and habeas data, to exercise the public right of action and to initiate enforcement proceedings, in defence of the fundamental rights of the individual. It could also initiate new legislation and undertake work with a view to the ratification of human rights treaties. The Office of the Ombudsman had recently identified a number of major areas requiring immediate action: situation of victims of violence-related displacement and measures to encourage their reintegration into their home villages and their former work; the problems of people unjustly charged or convicted for terrorism or treason; defence of indigenous rights in the Amazon region; and citizens' safety, in particular with regard to police behaviour. Women's rights were also high on the list of priorities of the Ombudsman, who organized coordination meetings with specialists and women's organizations. The Office of the Ombudsman had been established as an autonomous body under the new Constitution. The first Ombudsman had been elected by Congress in April 1996, with votes from both opposition and majority deputies.

36. On 23 June 1995, the internal rules of Congress had been adopted with the rank of statute. They established commissions, specialized working groups composed of deputies whose main function was supervisory and research-oriented. Membership of the commissions was subject to the principles of plurality, proportionality and specialization. There were three main groups of commissions, which included the ordinary commissions, responsible for current business on the congressional agenda, with priority given to the legislative and supervisory functions. The Pacification and Human Rights Commission, which entered into that category, was responsible for examining reported human rights violations.

37. The National Council for Human Rights was attached to the Ministry of Justice, the National Human Rights Committee to the Ministry of the Interior and the Congressional Pacification and Human Rights Commission to the legislature. The Ombudsman enjoyed complete independence; he was not bound by any mandate and did not receive instructions from any authority.

38. Question (d) in part II of the list concerned progress made in ensuring gender equality, in particular with regard to the legal capacity of married

women, and specific measures to provide support for women victims of violence. Gender equality was duly laid down in the legislation, first of all by the Constitution, which prohibited discrimination and guaranteed equality for purposes of employment. In employment matters women were also protected by article 48 of the supreme decree establishing regulations relating to the single article of the Employment Promotion Act, but also by a 1918 law dealing expressly with that matter. Peru had ratified several ILO conventions on work by women. Equality was also guaranteed in civil law matters by the new 1984 Civil Code, which had done much to rectify the discriminatory treatment of women in the 1936 Code. The Civil Code had been reformed following the entry into force of the 1979 Constitution, which guaranteed equality before the law without discrimination of any kind.

39. Concerning the protection of women victims of violence, Peru was a party to the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem-do-Para). The Peruvian police were empowered to intervene to prevent acts of violence within the family and to investigate such acts, which were defined in Act No. 26,260 as physical or psychological ill-treatment perpetrated between spouses or co-habitees and by parents or guardians against minors in their care. A directive had been issued containing rules for police intervention in cases of physical and psychological ill-treatment within families; better training for police officers was planned, to enable them to act more effectively in such situations and to take preventive action. In Lima the National Police had a women's unit, composed mainly of female police officers responsible for the protection of women. Units specializing in inquiries into family violence were being established in practically all branches of the National Police, particularly in areas with a high incidence of such ill-treatment. Numerous specialized police departments or units had been opened in the main cities and in Lima and its suburbs, which had the highest number of incidents.

40. Regarding the imposition of the death penalty referred to in question (e), it should be noted that throughout the period of revision of the Constitution the death penalty had neither been pronounced nor applied for treason in wartime or terrorism, which were the two offences carrying the death penalty under article 140 of the 1993 Constitution. The extension of the cases in which the death penalty could be imposed was not incompatible with the International Covenant on Civil and Political Rights since the Covenant did not prohibit the application of the death penalty to other offences if certain conditions were fulfilled. Peru was a party to the American Convention on Human Rights, which provided that the death penalty could not be pronounced for offences to which it had not applied at the time when the acts had been committed. Consequently, as the possibility of imposing the death penalty for terrorism had been introduced into the Constitution after Peru's accession to the Pact of San José, it would first be necessary to denounce the latter instrument. At present, therefore, it was only possible to pronounce the death penalty for treason in the context of external war.

41. Regarding implementation of the United Nations Standard Minimum Rules for the Treatment of Prisoners and the grouping principle enforced in Peruvian places of detention (question (f)), he said that prisoners were grouped according to socio-economic criteria: level of education, seriousness of the

offence, and legal situation, with unconvicted prisoners separated from convicted prisoners. Perpetrators of acts of terrorism were subject to special restrictions and were not eligible for the reduced sentences provided for in the Penal Code and Code of Execution of Sentences. Furthermore, it was mandatory for persons convicted of terrorism to be held in a maximum-security detention centre, in solitary confinement for the first year and under a compulsory labour system thereafter. They could not share cells with other detainees and were subject to a special disciplinary regime. In all cases overcrowding and unhealthy conditions were avoided.

42. Concerning the duration and conditions of incommunicado detention (question (g)), he said that the National Police were required to investigate acts of terrorism with strict respect for the law, in particular article 12 of Decree-Law No. 25,475. He referred to paragraphs 149 and 150 of Peru's third periodic report (CCPR/C/83/Add.1) and stressed that the maximum duration of incommunicado detention permitted by law was 15 calendar days. Consequently incommunicado detention was conducted in conformity with the law and with due respect for human rights and Peru's international obligations.

43. The legislation had also been changed to authorize the National Police to hold a person in custody for more than 15 days in the cases and according to the procedures provided for in article 2 of Decree-Law No. 25,744 (which related to police investigations, pre-trial proceedings and the trial of treason cases). In all cases, however, human rights were respected.

44. Concerning the steps taken to address the concerns expressed by the Committee at the end of its consideration of Peru's second periodic report (CCPR/C/51/Add.4 to 6), and the question whether there had been any cases during the period under review of persons detained for expressing political views (question (h)), he said that no one was detained for that reason, in accordance with article 2, paragraph 4, of the Peruvian Constitution. The press in Peru thus enjoyed complete freedom, which was in fact guaranteed by the Constitution and the relevant legislation.

45. In reply to question (1) on measures taken to address the phenomenon of violence-related displacement of persons, he said that one of the most tragic results of the violence that had struck Peru in the past 14 years was the forced displacement of peasant families from their places of origin to more or less remote areas. The villages those families left behind them had been seriously affected: property damage, break-up of communities, diminution of production capacity and considerable deterioration of living conditions. The Government's goal was to establish conditions favourable to the national pacification process and the families' return to their places of origin. To that end, it had set up a National Technical Commission on Displaced Populations and an Assistance Project for Returnees (PAR). The Government had allocated 163 million new soles for measures under the PAR, in which institutions such as the Inter-Ministerial Coordination Committee and the multisectoral coordination committees took part. In addition, resources from international cooperation were used to undertake specific activities in aid of the villages most affected. According to a 1994 study in the departments of Ayacucho, Apurímac, Huancarelica and Junín, approximately 56 per cent of the displaced peasants had already returned home. Various State agencies and NGOs had organized the return of 25,000 families (120,000 people) and a further

135,000 people should be returning home by their own means. Since the beginning of 1996, 1,300 families had officially returned. The main measures taken to date to help displaced populations had involved the building or rebuilding of more than 200 structures related to production, municipal services, health, education, roads and agriculture. Various steps had also been taken to revive agricultural production (distribution of fertilizers and implements, veterinary campaigns, measures to encourage land purchase, etc.) and self-managed canteens had been set up. Development projects had been launched in the hardest-hit areas of the above-mentioned departments with the aim of promoting sustainable development.

46. A number of measures had been taken in support of children: social protection centres to assist over 1,000 orphans, teaching and therapeutic centres for children in difficulty, school modules for 8,000 primary schoolchildren, food aid etc. More than 10,000 children under three years of age from high-risk groups were thus receiving dietary supplements as part of a programme being conducted in cooperation with the Ministry of Health.

47. Finally, in the context of the PAR, children and teenagers from 41 rural educational centres were taking part in basic farming activities by raising small animals and tending vegetable gardens.

48. Regarding the difficulties faced by journalists and the intimidation of journalists (question (j)), he referred to paragraph 278 of the third periodic report (CCPR/C/83/Add.1). Terrorist violence in Peru had decreased considerably. That was due to several factors: the dismantling of “Shining Path” after the arrest of the movement's top leader and several other leaders, the repentance policy, the establishment of the “rural militias” and the restoration of State authority in remote areas. All those measures had created a climate of confidence, which enabled journalists to work without risk of being subjected to the type of pressure referred to in the report. Nevertheless, the media continued to benefit from protection measures put in place by the authorities.

49. Concerning the steps taken to implement the Children's and Adolescents' Code of 23 June 1993 (question (k)), he said that the Government was particularly committed to the protection of minors. During the past five years that question had been given constant attention by the competent authorities, and legal measures had been taken. One of the most important was the establishment, pursuant to Act No. 26,518, of the governing body of the National System for the Comprehensive Protection of Children and Adolescents. That body would be responsible for coordinating efforts by all public and private agencies engaged in the protection of minors. It would function autonomously and be attached to the Office of the President of the Republic. It would ensure respect for the rights of children and adolescents and encourage community participation in programmes in that area. It would take the lead in implementing national adoption policy, monitor the records of public and private agencies for the protection of children, and ensure the implementation of the provisions contained in the Convention on the Rights of the Child. As part of coordination of those agencies at the national level, it would supervise services for the protection of children. There were currently 75 such services in provincial towns (some already functioning as a network), with 35 services in the capital. Grass-roots organizations,

parishes and NGOs also comprised such services. In short, the governing body, whose internal rules would be published shortly, would coordinate all efforts aimed at promoting the rights of children, in which all the institutions concerned would take part.

50. Another of the authorities' objectives for the current year was to establish, with international financial assistance, some 10,000 community crèches (Wawa Wasis), in addition to the 6,500 existing crèches. The crèches would accommodate a total of 80,000 children between the ages of six months and three years. They helped to solve the problem of the protection of children and provided a large number of people with an income.

51. In reply to the question on the enrolment of minors in the armed forces (question (k)), he said that, in accordance with article 22 of the Compulsory Military Service Act, as amended by Legislative Decree No. 759, senior military officers and the directors of the armed forces and police training colleges and military schools were required to obtain information relating to all persons under their command.

52. Concerning civilians, every January young persons who would be turning 17 during that year had to register for inclusion on the compulsory military service rosters, following which they underwent a selection procedure. No one was recruited by force, and no intimidation or coercion was used. Military service was deferred for young people enrolled in educational establishments.

53. In reply to question (1) on the law regulating the activities of political parties, he said that Congress had had before it a Political Parties Bill which was aimed at adapting the functioning of the parties to the current situation and laying down rules governing certain aspects. For the time being, the political parties were still governed by Act No. 26,337 of 1994, article 2 of which conferred organic-law status on the single integrated text of Decree-Law No. 14,250. That Decree-Law, which had been adopted several decades earlier, did not contain any provisions concerning the democratic functioning of parties or their sources of financing. The bill before Congress rectified that situation.

54. In reply to question (1) concerning legislation on the holding of a referendum, he referred to the provisions of article 2, paragraph 17, of the Constitution, which were reproduced in paragraph 340 of the third periodic report (CCPR/C/83/Add.1), and added that article 16 of the Citizens (Rights of Participation and Control) Act (No. 26,300) of 2 May 1994 set forth the mechanisms and procedures for exercising the right to hold a referendum.

55. Mr. El Shafel resumed the Chair.

56. The CHAIRMAN thanked the Peruvian delegation for its replies and invited members of the Committee to respond to the Peruvian delegation's comments on the Committee's preliminary observations (CCPR/C/79/Add.67) and its replies to part II of the list of issues (M/CCPR/C/57/LST/PER/4).

57. Mr. BRUNI CELLI drew the Peruvian delegation's attention to the fact that the members of the Committee had informed it the previous July of their

concern at its remarks about the activities of NGOs. They had pointed out that the Committee, like the other human rights bodies, received valuable help from NGOs, which helped the Committee in its work by gathering information and recording complaints. By no means could their mutual relations he said to be characterized by dependence or influence. The very existence of NGOs in Peru proved that there was freedom of association, as laid down in article 22 of the Covenant; NGOs' activities were in fact governed by the provisions of article 19 of the Covenant, and especially paragraph 2.

58. The previous July, the Peruvian delegation had made some very negative remarks about the NGOs' activities which, he felt, reflected a systematic policy of the Peruvian authorities. He cited a statement by the Minister of Justice - who was also the head of the Peruvian delegation presenting the third periodic report (CCPR/C/83/Add.1) - that had been reported in the Diario de la República on 11 August 1996. In the statement the Minister accused the NGOs of bias and criticized them for spreading erroneous information. In particular, the Minister accused Amnesty International and other human rights bodies of spreading “base lies”. The way in which the Minister refuted the NGOs' information in that statement was unacceptable. If NGOs were mistaken or lied, there were other ways of contesting their claims than by making such accusations.

58. That led him to the question of threats against members of NGOs. The physical integrity of NGO members - in particular, lawyers who defended the victims of human rights violations - was often under threat. He cited the cases of several lawyers who were reported to have received repeated death threats by telephone. The offices of the National Human Rights Commission and the National Human Rights Coordinating Organization had reportedly been under surveillance and their employees threatened. In his view, the situation was very disturbing.

59. Regarding the “faceless judges”, a new decree had been adopted on 2 October, extending for one year the provisions governing those courts. However, the head of the Peruvian delegation had recently stated that terrorist violence had diminished considerably in Peru and that the situation had improved. That was a positive development, but in such circumstances what justification was there for a measure extending an institution about which the Committee had expressed concern the previous July? Referring to paragraph 25 of the preliminary observations on Peru (CCPR/C/79/Add.67), he noted that only a few days after that document had been published, the Minister of Justice had made the statement in question to the press and indicated that the “faceless judges” system would be maintained for the time being because of the renewed seditious activities. He failed to understand: did that mean that violence in Peru had decreased or increased? What exactly was the situation in the country? He would like to hear the Peruvian delegation's reaction to all those points.

60. Mrs. MEDINA QUIROGA, reverting to the Peruvian delegation's reply to question (b) in part II of the list of issues, asked for confirmation of the fact that a report had been prepared on follow-up action taken in response to the views adopted by the Committee on the communications mentioned. If a report had been prepared, its conclusions should be communicated to the Committee as soon as possible. Regarding question (g), she asked whether the

provision made in Decree-Law No. 25,744 for the possibility of extending police custody beyond 15 days had been incorporated into the Peruvian Constitution and superseded the previous constitutional provisions governing that matter.

61. The paragraphs of the periodic report dealing with equal rights for men and women, in particular paragraphs 47 and 49, described how women's rights were guaranteed under the law, but there was no indication of the extent to which women actually enjoyed equal rights to those of men. Peruvian legislation still appeared to contain provisions that had long been felt to be unacceptable in international law, for example, those authorizing night work by women and generally speaking those placing women in an inferior social position. Thus article 241 of the Civil Code, which authorized marriage for girls aged 14 and for men aged 16, might give the impression that girls, lacking education and employment, would be in an inferior position in all areas. Similarly, the apparent purport of article 393 of the Civil Code was that single women under 16 years of age did not have the right to recognize their children; if that was actually the case, then there was a serious problem of discrimination. She also wondered about the meaning of article 337 of the Civil Code, under which the seriousness of the ill-treatment of married women apparently varied according to the woman's social environment, whether she lived in the town or country, etc. That seemed particularly disturbing. The Penal Code also seemed to be rather indulgent towards men convicted of killing their wives, for example on grounds of adultery. and rape ceased to be an offence if the man subsequently married the woman. In those circumstances, were women's physical integrity and freedom fully protected? And what about the rights of women living or having lived with men without being married, in particular with regard to inheritance? What were the legal provisions on the care of children? And did they enable women who so wished to work without too much difficulty? Lastly, she asked whether the new 1993 Constitution did not represent a retrograde step with regard to the protection of equality between men and women by comparison with the 1979 Constitution, which had seemed to contain some provisions that were favourable to women.

62. Mr. PRADO VALLEJO noted with deep regret that the suggestions and recommendations made by the Committee at its fifty-seventh session had not been followed up by the Peruvian authorities and that the situation in Peru continued to be characterized by violations of most of the Covenant's provisions. In addition, it appeared that the Covenant, while remaining in force, had lost status in the hierarchy of Peruvian internal law. For example, he would like to know to what extent the courts had taken the Covenant's provisions into account in handing down their decisions. He noted that the use of the referendum, which was the most democratic means of ascertaining the political will of the electorate was severely restricted in Peru, which in his view was deeply regrettable. He deplored the fact that capital punishment had been extended to crimes related to terrorism, given that the tendency in all countries was towards the complete abolition of the death penalty, regardless of the crime committed. The Inter-American Court of Human Rights had clearly expressed its opinion on that matter, regretting that countries such as Peru should take steps that were completely at variance with the basic principle of respect for the right to life.

63. He also regretted that no measure had been taken to implement the Committee's recommendations concerning incommunicado detention, which was the type of detention most liable to give rise to torture and ill-treatment. Likewise, the Peruvian Government had still not given details of follow-up action taken in response to the views adopted by the Committee under the Optional Protocol concerning the communications mentioned in part II, question (b), of the list of issues. It should give that information as soon as possible.

64. Mr. ANDO associated himself with Mr. Prado Vallejo's question about the Peruvian Government's follow-up to the Committee's views on the communications mentioned in part II, question (b) of the list, and with Mrs. Medina Quiroga's questions about inequality of treatment for men and women. Concerning question (f) he requested details on the grouping principle enforced in Peruvian places of detention, and on question (j) he asked whether any cases of harassment of Peruvian or foreign journalists had been reported since the time of writing of Peru's third periodic report. With regard to trade unions, he inquired about the number of members required for a union to be recognized by the Government, what were the registration procedures and in what way the rights of non-unionized workers, in particular agricultural workers, were protected. He also asked why members of the armed forces and police forces did not have the right to vote. Paragraph 327 of the third periodic report stated that 45 per cent of Peruvian children suffered from some degree of malnutrition, which in his view was particularly alarming; he asked what measures had been taken to remedy that situation.

65. Mrs. EVATT said she shared Mrs. Medina Quiroga's concern about the inequality and discrimination which women still suffered in Peru. She asked whether cases of violence against women were officially recorded and whether persons suspected of inflicting such violence were prosecuted in accordance with the law. She also inquired whether Peruvian legislation still prohibited a woman who had been raped from having a legal abortion. She understood that illegal abortions were responsible for the very high maternal mortality rate in Peru, in particular among women from the poorest sectors of the population. How were people who practised illegal abortions prosecuted?

66. She had received reports of women prisoners being sexually blackmailed or raped by certain members of the police forces, armed forces and prison staff. She asked whether anyone had been prosecuted in those cases. Was it true that women on remand for terrorist-related offences had limited visiting rights? Concerning women's conditions of employment, she inquired whether the applicable legislation was not discriminatory, in particular against domestic employees, who apparently had no guaranteed minimum wage, working hours or paid leave.

67. Mrs. CHANET said that she shared the concern expressed by other members of the Committee, in particular Mrs. Medina Quiroga and Mr. Ando. In addition, she had a particular interest in the implementation of articles 8 and 22 of the Covenant in Peru.

68. She would like to know what measures were taken to ensure full respect for the principle of prohibition of slavery, set forth in article 8 of the Covenant, in view of the fact that ILO had recently communicated information on cases of people working in certain areas of industry in conditions equivalent to forced labour. Had measures been taken to combat such practices in Peru?

69. Regarding the right to form trade unions, set forth in article 22 of the Covenant, she inquired whether the 1992 decree-law authorizing a worker to dissociate himself from a trade union and address the Ministry of Labour directly and personally in order to state his demands was still in force and whether its provisions were in conformity with those of article 22 of the Covenant. She also asked for confirmation of the information communicated by ILO to the effect that non-unionized workers in certain firms enjoyed advantages such as higher wages than the other workers.

The meeting rose at 1.05 p.m.