



# Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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## Committee against Torture

### Concluding observations on the seventh periodic report of Peru\*

1. The Committee against Torture considered the seventh periodic report of Peru (CAT/C/PER/7) at its 1683rd and 1686th meetings (CAT/C/SR.1683 and 1686), held on 13 and 14 November 2018, and adopted the present concluding observations at its 1707th meeting, held on 29 November 2018.

#### A. Introduction

2. The Committee would like to express its appreciation to the State party for agreeing to follow the optional reporting procedure, as this allows for a more focused dialogue between the State party and the Committee. However, the Committee regrets that the periodic report was submitted more than six months late.
3. The Committee appreciates the constructive dialogue held with the State party's delegation and the additional information provided during the consideration of the periodic report.

#### B. Positive aspects

4. The Committee welcomes the fact that, since the consideration of the preceding periodic report, the State party has ratified the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, on 6 January 2016.
5. The Committee also welcomes the adoption of the following legislative measures by the State party in areas of relevance to the Convention:
  - (a) The adoption on 21 June 2016 of Act No. 30470 on the search for persons who disappeared during the 1980–2000 period of violence;
  - (b) The adoption on 24 November 2015 of Act No. 30394 extending the duties of the Office of the Ombudsman to include those of the national mechanism for the prevention of torture;
  - (c) The adoption of Act No. 30364 on the prevention, punishment and eradication of violence against women and members of the family unit on 6 November 2015; Act No. 30819 of 12 July 2018 amending the Criminal Code and the Code on Children and Adolescents and strengthening the protection afforded under criminal law in relation to violence against women; Act No. 30838 of 11 July 2018 amending the Criminal Code and the Code of Criminal Enforcement to strengthen the prevention and punishment of offences against sexual freedom and inviolability; and Legislative Decree No. 1323 of 5

\* Adopted by the Committee at its sixty-fifth session (12 November–7 December 2018).



January 2017, which contributes to efforts to combat femicide, domestic violence and gender-based violence by establishing new offences and aggravating circumstances;

(d) The enactment on 30 December 2015 of Act No. 30403 prohibiting the use of corporal and other humiliating punishment against children and adolescents and the adoption of its implementing regulations in June 2018 (Supreme Decree No. 003-2018-MIMP).

6. The Committee commends the State party's efforts to adjust its policies and procedures in order to afford greater protection for human rights and to apply the Convention, in particular:

(a) The adoption of national human rights plans for the periods 2014–2016 and 2018–2021 by Supreme Decrees Nos. 005-2014-JUS of 5 July 2014 and 002-2018-JUS of 1 February 2018, respectively. The Committee appreciates that the goals set under the National Human Rights Plan 2018–2021 include establishing a centralized register of cases of torture and ill-treatment, adopting a strategic intersectoral road map and protocols to address cases of torture and ill-treatment and organizing a round table on strengthening the national preventive mechanism;

(b) The adoption of the National Prison Policy and the National Prison Policy Plan 2016–2020 through Supreme Decree No. 005-2016-JUS of 15 July 2016;

(c) The adoption of the National Plan to Search for Persons Who Disappeared between 1980 and 2000 on 25 December 2016 and the establishment of a relevant working group in July 2016;

(d) The adoption of the National Plan against Gender-Based Violence 2016–2021 through Supreme Decree No. 008-2016-MIMP of 26 July 2016 and the Joint Action Plan to Prevent Violence against Women through Supreme Decree No. 008-2018-MIMP of 25 August 2018;

(e) The adoption of an intersectoral protocol for the prevention and punishment of the offence of trafficking in persons and the protection, care and reintegration of victims by Supreme Decree No. 005-2016-IN of 12 May 2016 and the National Plan of Action to Combat Trafficking in Persons 2017–2021 by Supreme Decree No. 017-2017-IN of 8 June 2017;

(f) The adoption of the human rights handbook for police staff through Ministerial Decision No. 952-2018-IN of 14 August 2018.

7. The Committee appreciates the State party's request of 12 July 2017 to publish the report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on its visit to Peru from 10 to 20 December 2013 (CAT/OP/PER/1).

8. Lastly, the Committee appreciates that the State party maintains a standing invitation to the special procedure mechanisms of the Human Rights Council, which has allowed independent experts to carry out visits to the country during the reporting period.

## **C. Principal subjects of concern and recommendations**

### **Pending follow-up issues from the previous reporting cycle**

9. In paragraph 26 of its previous concluding observations (CAT/C/PER/CO/5-6), the Committee requested the State party to provide information on the follow-up given to a number of recommendations whose implementation it considered to be a matter of priority. Those recommendations were set forth in paragraph 8 (a) on the investigation of all reports of torture and ill-treatment and on the prosecution and punishment of perpetrators; in paragraph 15 (a) on reproductive rights and health; and in paragraph 17 (b) on the Comprehensive Reparations Plan. While noting with appreciation the replies submitted by the State party on 17 January 2014 under the follow-up procedure (CAT/C/PER/CO/5-6/Add.1) and referring to the letter dated 23 April 2014 from the Committee's Rapporteur for follow-up to concluding observations, the Committee considers that the

recommendation made in paragraph 17 (b) has not been acted upon and that the recommendations made in paragraphs 8 (a) and 15 (a) of the previous concluding observations have been partially implemented.

#### **Definition and punishment of the crime of torture**

10. The Committee considers the new definition of the offence of torture introduced by Legislative Decree No. 1351 of 7 January 2017, which amended article 321 of the Criminal Code, to be incomplete in that it does not explicitly include the aim or specific purpose that is the motivation for acts of torture, including those based on discrimination of any kind (art. 1).

11. **The Committee urges the State party to modify the definition contained in article 321 of the Criminal Code so that it expressly covers acts of torture committed for such purposes as obtaining information or a confession from the victim or a third person, punishing the victim for an act that the victim or a third person has committed or is suspected of having committed, or intimidating or coercing the victim or a third person, or for any reason based on discrimination of any kind. In that regard, the Committee draws attention to its general comment No. 2 (2008) on the implementation of article 2 of the Convention by States parties, in which it states that serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).**

#### **Fundamental legal safeguards**

12. The Committee regrets the paucity of information on the procedures in place to ensure that the fundamental safeguards for persons deprived of their liberty provided for in the laws of the State party are upheld in practice. It also regrets the lack of official data on the number of complaints filed during the period under review (art. 2).

13. **The State party should adopt effective measures to ensure that all detainees enjoy, in practice, the benefits of all fundamental safeguards, in line with international standards, from the outset of their deprivation of liberty, in particular: the right to legal assistance without delay and the right to receive such assistance free of charge if necessary; the right to request and obtain immediate access to an independent doctor, in addition to any medical examination that may be conducted at the authorities' behest; the right to be informed of the reasons for their detention and the nature of the charges against them in a language that they understand; the right to have their detention recorded in a register; the right to inform a family member or another person of their detention without delay; and the right to be brought before a judge without delay.**

#### **National preventive mechanism**

14. The Committee welcomes the designation of the Office of the Ombudsman as the national preventive mechanism, although this should have been done no later than one year after the Optional Protocol entered into force for the State party in October 2006. The Committee regrets, however, that the national preventive mechanism does not enjoy the operational autonomy required for the normal performance of its work and that it as yet does not have the human, material and technical resources that it needs to function properly (art. 2).

15. **The State party should ensure the operational autonomy of the national preventive mechanism and provide it with the necessary resources for the performance of its work in accordance with article 18 (1) and (3) of the Optional Protocol (see also the guidelines on national preventive mechanisms, paras. 11 and 12).**

#### **Investigation of acts of torture and ill-treatment and prosecution and punishment of perpetrators**

16. The Committee regrets that it did not receive full information from the State party on the number of complaints of acts of torture or ill-treatment registered during the period under review. The data provided by the Office of the Ombudsman indicate that between

January 2012 and September 2018 the Office registered a total of 1,518 complaints relating to violations of the right to integrity of the person, including 36 complaints of torture, 129 complaints referring to cruel, inhuman or degrading treatment, 1,093 regarding physical or psychological abuse and 200 regarding excessive use of force. In its second annual report, published in June 2018, the national preventive mechanism stated that it had received complaints from minors held in juvenile diagnostic and rehabilitation centres that they had been assaulted during their stay in those centres. The Committee regrets that very little information is available on the prosecutions and disciplinary proceedings dealing with acts of torture or ill-treatment that have been initiated since its consideration of the previous periodic report. According to the scant information that has become available, two convictions for acts of torture have been handed down since 2006, while, in two other criminal cases, the accused were acquitted of this crime. The Committee does not, however, have any information on the particulars of the cases that were prosecuted, the sentences imposed on the persons who were convicted or the reasons for the acquittals. It is also a matter of concern that, as the delegation noted, a possible reason for the small number of convictions could be the recent change in the legal definition of the crime of torture and justice officials' confusion of that offence with other crimes. Lastly, the Committee is concerned by the imbalance between the number of cases in which free legal aid has been provided by the Criminal Defence Directorate of the Ministry of Justice and Human Rights to persons accused of acts of torture and the small number of cases in which persons have received legal support from the Ministry's Directorate of Legal Aid and Victim Defence (arts. 2, 12, 13 and 16).

**17. The Committee urges the State party to:**

**(a) Ensure that all complaints of torture and ill-treatment are investigated in a prompt and impartial manner by an independent body and continue its efforts to define cruel, inhuman or degrading treatment or punishment;**

**(b) Ensure that the authorities open an investigation ex officio whenever there are reasonable grounds for believing that an act of torture or ill-treatment has been committed;**

**(c) Ensure that, in cases of alleged torture and/or ill-treatment, suspected perpetrators are immediately suspended from duty for the duration of the investigation, particularly when there is a risk that they might otherwise be in a position to repeat the alleged act, take reprisals against the alleged victim or obstruct the investigation;**

**(d) Facilitate access to justice for victims by way of appropriate legal support, including free legal assistance where appropriate, and ensure that suspected perpetrators are duly prosecuted and, if found guilty, receive penalties commensurate with the seriousness of their actions;**

**(e) Ensure that justice officials receive the necessary training to enable them to correctly determine which provision of the Criminal Code is applicable in cases of torture and ill-treatment;**

**(f) Compile statistics on the number of complaints, investigations, prosecutions, convictions and penalties dealing with cases of torture and ill-treatment.**

**Coerced confessions**

18. While taking note of the provisions of article VIII of the preliminary section of the new Code of Criminal Procedure concerning the inadmissibility of evidence obtained in a manner involving the violation of fundamental safeguards, the Committee is concerned by the fact, as noted by the State party's delegation, that neither the Public Prosecutor's Office nor members of the judiciary have information on court decisions in which confessions obtained through torture or ill-treatment have been ruled inadmissible (arts. 2, 11, 15 and 16).

19. **The State party should:**

(a) **In accordance with the new Code of Criminal Procedure, take all necessary measures to ensure that no confessions or statements obtained under torture or ill-treatment are admitted into evidence, except when they are used as evidence against a person accused of committing torture in order to obtain that confession or statement;**

(b) **Expand the training programmes for judges and prosecutors in order to provide the skills needed to detect and investigate all complaints of torture and ill-treatment effectively and, in particular, build the institutional capacity needed in order to disallow statements obtained under torture;**

(c) **Compile information on criminal proceedings in which judges, either on their own initiative or at the request of parties to the case, have ruled that evidence obtained under torture or ill-treatment is inadmissible, and the measures taken in that regard.**

**Excessive use of force**

20. The Committee is concerned at the number of persons who have been killed or injured as a result of the actions taken by the security forces in response to the sometimes violent protests against mining projects and other extractive industries that have taken place in various regions of the country. While noting a marked decrease in such incidents in recent years, the Committee regrets that the State party has not provided the requested information on the investigations and related criminal proceedings carried out in respect of all deaths of demonstrators caused by shots fired by members of the National Police or the Armed Forces during the period under review. In addition, while noting the explanations given by the delegation concerning the scope of military jurisdiction and the applicable emergency legislation, the Committee remains concerned about the State party's abusive use of states of emergency and the consequent restriction and/or suspension of fundamental rights and freedoms to quell or even to forestall this type of protest (arts. 2, 12, 13 and 16).

21. **The State party should:**

(a) **Ensure that all complaints of excessive use of force, especially lethal force, by law enforcement and military personnel are promptly and impartially investigated, that the suspected perpetrators are prosecuted and, if found guilty, are punished in a manner that is commensurate with the seriousness of their actions and that victims or their families receive appropriate compensation;**

(b) **Ensure the independence of the agency responsible for investigating complaints of excessive use of force and other forms of police misconduct and ensure that the investigators do not have any institutional or hierarchical relationship with the suspected perpetrators;**

(c) **Ensure that law and order is maintained, to the greatest extent possible, by civilian rather than military authorities;**

(d) **Provide more mandatory, ongoing training to all law enforcement officers and members of the military on the use of force, especially in the context of demonstrations, taking due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(e) **Compile detailed information on the number of complaints, investigations, prosecutions, convictions and sentences handed down in cases involving the excessive use of force;**

(f) **Limit the imposition of states of emergency to situations of absolute necessity, while continuing to honour its international obligations.**

### **Police violence and arbitrary detention motivated by sexual orientation or gender identity**

22. The Committee is concerned by reports of transgender women being subjected to arbitrary detention and sexual violence by members of the National Police. With regard to this type of situation, the Committee takes note of the applicable provisions of the human rights handbook prepared for police staff, adopted by Ministerial Decision No. 952-2018-IN, and of the inclusion of modules on gender-based violence in the curricula of police training centres. While also taking note of the information provided by the delegation concerning the Azul Rojas Marín and Yefri Edgar Peña Tuanama cases, the Committee regrets that the State party has not provided the requested data on the complaints concerning this type of abuse that were filed during the period under review (arts. 2, 12, 13 and 16).

**23. The State party should also ensure that assaults motivated by a person's sexual orientation or gender identity are investigated and that the persons responsible are brought to justice. The State party should take all necessary measures to ensure the personal safety of lesbian, gay, bisexual and transgender persons in all spheres, including in places of detention.**

### **Conditions in places of detention**

24. As acknowledged by the delegation, overcrowding is one of the main problems facing the prison system. The Committee therefore appreciates the efforts made by the State party to improve conditions in places of detention, which include the opening of four new prisons and the planned construction of another two large-capacity ones, the execution of expansion works and the refurbishment of existing facilities. While also appreciating the legislative initiatives taken to encourage the use of non-custodial measures, the Committee observes that their use is still very limited. The Committee is also concerned about the large number of persons being held in pretrial detention, sometimes for prolonged periods, and the fact that pretrial detainees are not separated from convicted prisoners. The Committee takes note of the establishment in 2015 of a standing commission on gender mainstreaming in prison policies, but remains concerned by reports that the prison authorities do not give sufficient consideration to the special needs of women deprived of their liberty, especially in the case of pregnant women and women with children under the age of 3. Other information received by the Committee points to the poor quality of the food provided to prisoners, water supply and sanitation problems, insufficient ventilation, significant shortages in medical and health-care services, a lack of specialized personnel and corruption on the part of prison officials. Lastly, the Committee takes note of the work currently being undertaken in order to improve the detection and treatment of tuberculosis cases in prisons and to install security equipment in prisons for use in preventing the entry of prohibited articles while respecting the dignity of persons during body searches (arts. 2, 11 and 16).

25. **The State party should:**

(a) **Redouble its efforts to ease overcrowding in detention centres, in particular by using non-custodial sentences, and to continue to improve existing prison facilities. In that connection, the Committee draws the State party's attention to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Take measures, as a matter of urgency, to remedy shortcomings in general living conditions in prisons;**

(c) **Ensure that pretrial detention is not excessively prolonged;**

(d) **Ensure the strict separation of pretrial detainees from convicted prisoners in all detention facilities;**

(e) **Ensure the allocation of the human and material resources needed to provide proper medical and health care to prisoners in accordance with rules 24 to 35 of the Nelson Mandela Rules;**

(f) **Ensure that the special needs of women deprived of their liberty are attended to, in keeping with the Nelson Mandela Rules and the Bangkok Rules (see, in particular, rules 48 to 52);**

(g) **Ensure that body searches are performed in a manner that respects the inherent dignity of persons deprived of their liberty. Invasive body searches should be conducted only when absolutely necessary and should be performed in private by an appropriately trained staff member of the same sex as the inmate. Visitor search and admission procedures should not be degrading and should be subject, at a minimum, to the same rules as those applied to inmates (rules 50 to 53 and 60 of the Nelson Mandela Rules).**

#### **Disciplinary rules**

26. The Committee is concerned that, according to explanations provided by the delegation, prisoners who commit a serious offence may be punished by up to 30 days in solitary confinement, which may be extended for a further 15 days if they commit another offence during the application of that disciplinary measure. In addition, the Committee is concerned about arbitrariness and a lack of due process in the imposition of disciplinary sanctions, irregularities in the recording of those sanctions and the appalling material conditions of the punishment cells described by the Subcommittee on Prevention of Torture (CAT/OP/PER/1, paras. 69 to 75) (arts. 2, 11 and 16).

27. **The State party should ensure that:**

(a) **Solitary confinement is used only in exceptional cases as a last resort, for as short a time as possible (no more than 15 days) and subject to independent review, and only upon authorization by a competent official, in accordance with rules 43 to 46 of the Nelson Mandela Rules;**

(b) **In accordance with rule 42 of the Nelson Mandela Rules, the general living conditions addressed in the rules, including those related to light, ventilation, temperature, sanitation, nutrition and drinking water, inter alia, apply to all prisoners without exception.**

#### **Deaths in custody**

28. The Committee takes note with concern of the number of people who died while in custody between 2012 and 2014 (a total of 639 persons, including 30 women, according to data provided by the State party) and of the causes of death, which in many cases were violent assaults or infectious diseases, especially tuberculosis and acquired immunodeficiency syndrome (AIDS). The Committee regrets that it has not received complete statistics for the period 2015–2018 or detailed information on the results of investigations into those deaths or the concrete measures taken to prevent similar cases from occurring in the future. The Committee is also concerned by the fact that, as noted in 2017 by the national preventive mechanism, the deaths of persons held in so-called “meditation rooms” at police stations in Lima was one of the most serious problems it had encountered in the course of its monitoring activities. The Committee regrets the State party’s failure to provide detailed information on the findings of the investigations into these deaths. The Committee also takes note of the information provided by the State party regarding the commencement of the trial of 35 former members of the Navy for the alleged killing of 133 prisoners during a riot at El Frontón prison in June 1986 and on the death in June 2016 of Walter Johnny Arrunátegui Gómez in a cell at Barboncitos police station in San Martín de Porres (arts. 2, 11 and 16).

29. **The Committee urges the State party to:**

(a) **Ensure that all deaths of persons while in custody are investigated in a prompt and impartial manner by an independent body in accordance with the Minnesota Protocol on the Investigation of Potentially Unlawful Death;**

(b) **Strengthen measures for preventing and reducing violence among persons deprived of their liberty, in particular by introducing appropriate preventive strategies that provide for this type of incident to be monitored and documented with**

**a view to investigating all complaints and ensuring that all those responsible are held accountable;**

**(c) Investigate any potential involvement of police and prison staff in the death of persons in custody and, where warranted, appropriately punish the guilty parties and award fair and adequate compensation to the families;**

**(d) Ensure prison security by providing prison staff with proper training;**

**(e) Assess the effectiveness of programmes for the prevention, detection and treatment of infectious diseases in prisons;**

**(f) Compile detailed data on suicides among persons deprived of their liberty and assess the effectiveness of prevention and risk identification strategies and programmes.**

### **Training**

30. The Committee acknowledges the efforts made by the State party to develop and implement human rights training programmes that include modules on the provisions of the Convention and the proportional use of force for personnel of the Peruvian National Police, the Armed Forces and the judicial branch. The Committee regrets, however, that the State party does not yet have a methodology for evaluating the effectiveness and impact of training programmes in reducing the number of cases of torture and ill-treatment. The Committee is also concerned about the fact that the State party has not provided the requested information on training programmes for judges, prosecutors, forensic doctors and other medical staff who deal with detained persons, to enable them to detect and document the physical and psychological consequences of torture (art. 10).

31. **The State party should:**

**(a) Continue to develop and implement mandatory training programmes and provide the necessary instruction to ensure that all public servants, particularly members of the National Police and the Armed Forces, personnel of the judicial branch, prison staff, and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment, are fully familiar with the provisions of the Convention and are fully aware that breaches will not be tolerated, that they will be investigated and that those responsible will be prosecuted;**

**(b) Ensure that all relevant staff, including medical personnel, receive specific training in identifying and documenting cases of torture and ill-treatment in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);**

**(c) Establish a methodology for evaluating the effectiveness of training programmes as a means of reducing the number of cases of torture and ill-treatment;**

**(d) Ensure that all law enforcement officials, judges and public prosecutors receive mandatory training emphasizing the link between non-coercive interrogation techniques, the prohibition of torture and ill-treatment, and the obligation of the judiciary to disallow confessions made under torture.**

### **Serious human rights violations that occurred during the period of violence between 1980 and 2000**

32. Bearing in mind the Committee's previous concluding observations (CAT/C/PER/CO/5-6, para. 16), the Committee remains concerned at the limited progress made since the consideration of the previous periodic report in the investigation and prosecution of serious human rights violations, in particular acts of torture, including sexual violence against women and girls, and enforced disappearances, committed in the course of the internal armed conflict between 1980 and 2000. The Committee regrets that the State party has provided statistics in this regard only for the period 2012–2015, although it does take note of the information that had been requested in relation to the Cabitos 84 case. The

Committee also takes note of the information provided by the delegation on the procedural situation of former President Alberto Fujimori following the court decision of 3 October 2018 to revoke the presidential pardon that had been granted on 14 December 2017 on humanitarian grounds, against which an appeal is pending (arts. 2, 12, 13 and 16).

33. **The Committee urges the State party to:**

(a) **Continue to investigate and prosecute cases involving human rights violations that occurred between 1980 and 2000 and ensure that the perpetrators of those crimes are given sentences that are commensurate with the seriousness of their actions and that those sentences are effectively enforced;**

(b) **Continue to collect data on the progress made in shedding light on cases of torture and other serious human rights violations committed in the past.**

#### **Redress**

34. The Committee observes that, despite its repeated requests, the State party has not submitted the requested information on redress and compensation measures, including means of rehabilitation, ordered by the courts and actually provided to victims of torture or their families during the reporting period. Nor has the requested information been provided to the Committee regarding current programmes for the provision of redress to victims of torture and ill-treatment, including treatment for physical and psychological trauma and other forms of rehabilitation, or regarding the allocation of adequate resources to ensure the effective implementation of such programmes. With regard to the Comprehensive Reparations Plan for victims of the violence that occurred between 1980 and 2000, and notwithstanding the explanations provided by the delegation, the Committee remains concerned about the fact that members of terrorist organizations and persons prosecuted for crimes of terrorism or justification of terrorism are not granted the status of victims and are not eligible for reparations programme benefits until such time as their legal status has been determined, although it does take note of the fact that these persons have the option of petitioning the courts for redress for any acts of torture to which they may have been subjected (art. 14).

35. **The Committee draws the State party's attention to its general comment No. 3 (2012) on the implementation of article 14 by States parties, in which it elaborates on the nature and scope of their obligations under the Convention to provide full redress to victims of torture. In particular, paragraph 32 of that general comment indicates that States parties should ensure that victims of torture have ready access to justice and mechanisms for seeking and obtaining redress and that positive measures should be in place to ensure that redress is available to all, including those accused of political crimes or terrorist acts. For the above reasons, the State should:**

(a) **Ensure that all victims of torture and ill-treatment obtain redress, including an enforceable right to fair and adequate compensation and the means for as full a rehabilitation as possible;**

(b) **Ensure continuous monitoring and evaluation of the effectiveness of rehabilitation programmes for victims of torture and ill-treatment;**

(c) **Eliminate discriminatory exceptions whereby victims of the violence that occurred between 1980 and 2000 are not granted the status of victims of torture and are not eligible for reparations programme benefits;**

(d) **Ensure the allocation of sufficient financial and human resources for the implementation of the Comprehensive Reparations Plan at the individual and collective levels;**

(e) **Continue to uphold the right to the truth, redress and guarantees of non-repetition, in accordance with article 14 of the Convention.**

#### **Forced sterilizations**

36. In relation to its previous concluding observations (CAT/C/PER/CO/5-6, para. 15), the Committee welcomes the delegation's announcement that the Public Prosecution

Service filed a criminal complaint on 12 November 2018 against doctors and senior officials serving at the time of the events for their indirect involvement in the commission of offences against the life, physical integrity and health of more than 2,000 women subjected to forced sterilization (arts. 2, 12, 13 and 16).

**37. The Committee urges the State party to ensure that prosecution is undertaken in such cases, that the perpetrators of those crimes are given sentences that are commensurate with the seriousness of their actions, that those sentences are effectively enforced and that redress is provided to the victims.**

#### **Protection against gender-based violence**

38. The Committee welcomes the legislative and other measures recently adopted by the State party to prevent and punish gender-based violence against women and girls. It notes with concern, however, the high incidence of gender-based violence in the State party and the increase in the number of cases of femicide, domestic violence and sexual violence highlighted by the delegation. According to official data, between January 2017 and September 2018, prosecutions were brought in 755 cases of femicide, 33,064 cases involving injuries, 8,157 cases of rape and 4,069 cases involving indecent acts. The Committee also notes the explanations provided by the delegation regarding the prohibition of conciliation in cases of domestic violence and the training provided in this area to members of the National Police, the Public Prosecution Service and other entities entrusted with protecting women's rights. Nevertheless, the Committee remains concerned about data from a recent study by the Office of the Ombudsman, which indicates that 38.9 per cent of police officers interviewed were in favour of conciliation in cases of violence committed against women by their partners and that 51 per cent of family court judges interviewed were of the opinion that some violent situations could be resolved through a conciliation agreement between partners.<sup>1</sup>

**39. The State party should:**

**(a) Ensure that all cases of gender-based violence against women and girls, especially those involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately and that the victims receive redress, including adequate compensation;**

**(b) Ensure the prohibition of conciliation in all cases of domestic and spousal abuse;**

**(c) Provide mandatory training on the prosecution of gender-based violence to judges, public prosecutors and law enforcement personnel and conduct awareness-raising campaigns on all forms of violence against women;**

**(d) Ensure that victims of gender-based violence receive the medical care, psychological support and legal assistance they require.**

#### **Voluntary termination of pregnancy**

40. The Committee is concerned at reports indicating that, in practice, access to therapeutic abortion is still not guaranteed in cases where the pregnancy is the result of rape or incest and in cases of severe fetal impairment, despite the adoption of the "National Technical Guide for standardized procedures in the comprehensive care of expectant mothers in the voluntary therapeutic termination of a pregnancy of less than 22 weeks, with informed consent within the framework of the provisions of article 119 of the Criminal Code." The Committee welcomes the amendment of Act No. 30364 by Legislative Decree No. 1386 of 3 September 2018, which explicitly recognizes the obligation to provide specialized care to victims of sexual violence, and the provisions of article 76.3 of the regulations of Act No. 30364, which establish that public health centres must inform

<sup>1</sup> "Act No. 30364, the administration of justice and victims' perspectives", Report No. 063-2017DP/ADM, Lima, Office of the Ombudsman, 2017, pp. 40 and 63.

victims of sexual violence of their right to receive “treatment for sexually transmitted infections, antiretroviral therapy, oral emergency contraception and other forms of treatment” (arts. 2 and 16).

**41. The State party should review its legislation in order to extend the grounds for the legalization of voluntary terminations of pregnancy to cases of rape, incest and severe fetal impairment. It should also review its legislation with a view to decriminalizing the medical care provided by health professionals to women who require it as a result of complications deriving from clandestine abortions.**

#### **Persons with disabilities**

42. The Committee remains concerned about the treatment of persons with disabilities in psychiatric hospitals (CAT/C/PER/CO/5-6, para. 19). The Committee is concerned about shortcomings and irregularities observed by the Office of the Ombudsman in the use of electroconvulsive therapy on patients in the Hermilio Valdizán National Hospital, although it understands that the authorities have already taken action in this matter (arts. 2, 11, 12, 13 and 16).

**43. The Committee urges the State party to investigate all complaints of the ill-treatment of persons in psychiatric hospitals promptly and impartially and to ensure that the alleged perpetrators are prosecuted.**

#### **Abuse in armed forces and National Police training schools**

44. The Committee is concerned about reports of the abuse, occasionally resulting in death, of soldiers completing voluntary military service and other military personnel in armed forces training schools (arts. 2, 12, 13 and 16).

**45. The State party should ensure that prompt and impartial investigations are conducted into all complaints of the abuse of soldiers completing voluntary military service and other military personnel, as well as deaths that occur on armed forces premises and in armed forces training schools. The State party should also ensure that, in such cases, all examinations of complaints against military personnel are carried out by an independent body. The Committee further recommends that the State party take the necessary measures to prevent such abuse in the future.**

#### **Non-refoulement**

46. The Committee appreciates the significant efforts made by the State party to respond to the large influx of asylum seekers, persons in need of international protection and irregular migrants arriving in its territory, the majority of whom are nationals of the Bolivarian Republic of Venezuela. According to data provided by the delegation, more than 550,000 Venezuelans have arrived in Peru, mainly by crossing its borders with Ecuador and Colombia. The Committee notes that while the law provides that asylum applications may be submitted to the Special Commission for Refugees, border posts, police stations and military posts, in practice, no mechanism is in place that would allow bodies other than the Special Commission to receive such applications. Thus, the introduction in August 2018 of a passport requirement for Venezuelan nationals wishing to enter the country obliged the Special Commission to open an office in the Tumbes Binational Border Control Centre, the main point of entry for Venezuelans on the border with Ecuador (art. 3).

**47. The Committee calls on the State party to adopt the necessary legislative and other measures to:**

(a) **Ensure that no one may be expelled, returned or extradited to another State where there are substantial grounds for believing that he or she would run a personal and foreseeable risk of being subjected to torture;**

(b) **Guarantee that all persons in the territory or under the jurisdiction of the State party have effective access to the procedure for determining refugee status. In particular, the State party should establish a protocol under which applications for asylum may be submitted to the Special Commission for Refugees through border**

**posts, police stations and military posts and ensure that personnel in such places receive appropriate training.**

#### **Human rights defenders and journalists**

48. Regarding the request for information on measures taken by the State party to protect human rights defenders and journalists from acts of intimidation and violence to which they may be exposed because of their activities, the Committee takes note of the round-table proposal to establish a protocol to protect human rights defenders, in accordance with Vice-Ministerial Decision No. 007-2016-JUS (arts. 2, 12, 13 and 16).

**49. The State party should take the necessary measures, including the adoption of the above-mentioned protocol, to ensure that human rights defenders and journalists can conduct their work and activities in the State party freely and without fear of reprisals or attacks. It should also investigate promptly, thoroughly and impartially all violations committed against human rights defenders and journalists, prosecute the alleged perpetrators, punish appropriately those found guilty and provide redress to the victims.**

#### **Follow-up procedure**

50. The Committee requests that the State party provide, by 7 December 2019 at the latest, information on follow-up to the Committee's recommendations on the national preventive mechanism, forced sterilizations, and human rights defenders and journalists (paras. 15, 37 and 39 above, respectively). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the recommendations contained in the concluding observations.

#### **Other issues**

**51. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, to all the organs of the State party, including the relevant authorities, and also through official websites, the media and non-governmental organizations.**

**52. The Committee requests the State party to submit its next periodic report, which will be its eighth, by 7 December 2022. For that purpose, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its eighth periodic report under article 19 of the Convention.**

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