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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Third periodic reports of States Parties due in 1997

Addendum

PERU*

[12 December 1998]

* For the initial report submitted by the Government of Peru, see document CAT/C/7/Add.16; for its examination by the Committee, see documents CAT/C/SR.193, CAT/C/SR.194 and Add.2, and Official Records of the General Assembly, Fiftieth Session, Supplement No. 44 (A/50/44), paras. 62-73. For the second periodic report, see document CAT/C/20/Add.6; for its examination by the Committee, see documents CAT/C/SR.330, 331 and 333 and Official Records of the General Assembly, Fifty-third session, Supplement No. 44 (A/53/44), paras. 197-205.

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Article 1

1. In compliance with the obligations assumed by the Peruvian State in adhering to the Convention against Torture, the Constitution of Peru, in force since 1993, prohibits torture under the Peruvian legal system, article 2 providing as follows:

Article 2: "Every person has the right:

1. To life, to his identity, to his moral, mental and physical integrity, and to his unrestricted development and well-being. Everything conducive to the realization of this principle is a matter of right ...

24. To personal freedom and security. Consequently: ...

(h) No one may be subjected to moral, psychological or physical violence, nor to torture or cruel or degrading treatment. Anyone may request the immediate medical examination of an injured person or of a person unable to petition the authorities himself. Statements obtained through violence are invalid. Whoever resorts to it incurs responsibility therefor".

2. Further, there has been in force since 21 February 1998 Act No. 26926, which, amending various articles of the Penal Code, embodies section XIV-A, on crimes against humanity, article 321 of which specifies the offence of torture, providing as follows:

"An official or public servant, or any person acting with his consent or acquiescence, who inflicts upon another serious discomfort or suffering, whether physical or mental, even without causing physical pain or mental distress, for the purpose of obtaining a confession or information from the victim or a third party, or of punishing him for any act that he may have committed or is suspected of having committed, or of intimidating or coercing him, shall be punished by a custodial penalty of not less than 5 nor more than 10 years.

"If the torture results in the injured party's death or causes serious injury and the person inflicting it could have foreseen that outcome, the custodial penalty shall be, respectively, not less than 8 or more than 20 years, and not less than 6 or more than 12 years."

3. The adoption of this provision penalizes torture in our country, thereby differentiating acts so characterized from the offences of homicide and of assault and battery through the adoption of a distinct set of penal rules. Before it was thus penalized, the offence of torture had been punished under related categories; however, this situation complicated the work of the judiciary, since criminal proceedings have to be conducted with due regard to the principle of legality and the limitative nature of the enumeration of punishable offences, together with the obligation to interpret penal questions solely from a restrictive viewpoint. Thus it was very easy, on the strength of all these arguments, to leave crimes of torture unpunished; their categorization has made it legally impossible to adduce such reasons.

4. With regard to the provision in the Convention that torture does not include pain or suffering arising from, inherent in or incidental to lawful sanctions, it must be noted that in article 28 of the Penal Code the penalties applicable under that Code are defined as: deprivation of liberty, restriction of liberty, limitation of rights, and fine. There exist types of lawful sanction established under our legal system and complemented by the provisions of article III, "Principle of humane treatment" of the Preliminary Section of the Code of Penal Enforcement, where it is stipulated that enforcement of penalties and measures depriving accused persons of liberty must not involve torture or cruel or degrading treatment, or any other kind of proceeding hurtful to the dignity of the detainee.

5. Article 44 of the Code cited provides that: "The prisoner may obtain remission of the penalty through work at the rate of one day of sentence to two days of effective labour, under the direction and supervision of the Prison Administration ..."

6. Again, article 119 states: "The penalty of community service requires the convicted person to perform unremunerated work in care facilities, hospitals, schools, orphanages and other similar institutions, or public works. The Prison Administration consults with the said institutions in order to determine their requirements and apportion the services provided accordingly."

7. The modalities thus established by law for obtaining remission of sentences should therefore not be considered as acts of torture, causing pain or suffering, but as the consequence of lawful sanctions.

8. It must also be pointed out that article 2 of the Inter-American Convention to Prevent and Punish Torture contains a broader definition of torture. It uses the term "punishment", covering both custodial and physical penalties. The main features entering into the definition of the term "torture" are: the severity of the physical or mental pain or suffering caused to the victim, the intentionality of the act, the fact that it was committed with a specific purpose in view, and the direct or indirect participation of State officials.

9. Reference is made not only to the use of violence for obtaining information and confessions, but also to outrageous acts committed for the purpose of punishing or intimidating the victims. Nevertheless, the fact that "lawful sanctions" are excluded from the prohibition offers Governments a way of justifying such acts, which can have serious consequences and is only partially limited by a reference made to the minimum rules for the treatment of detainees.

10. Finally, it may be noted that torture comprises other acts such as isolation, sequestration, secret detention and holding incommunicado without access to legal aid or contact with family or friends.

Article 2

11. Peruvian legislation provides for effective legislative, administrative, judicial or other measures for preventing torture, applicable within the

territory of the Republic. In addition to the principles enshrined in the Constitution, we have the provisions embodied in Legislative Decree No. 635, (Penal Code), such as:

Article 128. “Whoso puts at risk the life or health of a person placed under his authority, dependency, guardianship, custody or supervision, whether by depriving him of essential food or care, forcing him to perform excessive or unsuitable work, or abusive application of corrective or disciplinary measures, shall be punished by deprivation of liberty for not less than one or more than four years.”

Article 151. “Whoso by threat or violence forces another to do what the law does not command, or requires him to do what it does not prohibit, shall be punished by a maximum of two years' deprivation of liberty.”

Article 152. “Whoso wrongfully deprives another of his personal freedom shall be punished by imprisonment for not less than 10 or more than 15 years.

> “The sentence shall be for not less than 20 nor more than 25 years where:
>
> “1. The responsible party abuses, corrupts or treats cruelly the injured party or puts his life or health at risk; (...)
>
> “8. The act is committed in order to force the injured party to join a criminal organization, or to force him or a third party to provide the organization with economic aid or any other form of collaboration; (...)
>
> “10. The responsible party has been sentenced for terrorism. The penalty shall be life imprisonment should the injured party be left with severe bodily injuries or damage to his physical or mental health, or dies during sequestration or as a result of the said act.”

Article 153. “Whoso detains or transfers from one place to another a minor or a person incapable of managing his own affairs, using violence, threats, deception or other fraudulent means, for the purpose of obtaining an economic advantage or exploiting the victim socially or economically, shall be punished by imprisonment for not less than 4 or more than 10 years, with disqualification in accordance with article 36, paragraphs 1, 2, 4 and 5.”

Article 153A. “An officer in the public service or responsible staff member of a private body having specific or general links with minors or incompetent persons who, abusing his position, detains them or transfers them arbitrarily from one place to another shall be punished by imprisonment for not less than 5 nor more than 12 years and by disqualification in accordance with article 36, paragraphs 1, 2, 4 and 5 ...”

12. Again, article 195 of the Code of Criminal Procedure states:

Article 195. “Any item of evidence, in order to be valid, must have been obtained by lawful means and included in the case file according to law.”

13. Under the Code of Penal Enforcement (Legislative Decree No. 654),

Preliminary section, article III: “Enforcement of penalties and measures depriving accused persons of liberty must not involve torture or cruel or degrading treatment or any other act or procedure injurious to the dignity of the detainee.”

> Article 14. “A detainee has the right to submit complaints and petitions to the director of the penal establishment.
>
> If the complaint is not attended to, the detainee may apply, through any channel, to the representative of the Public Prosecutor's Department.”

14. The Children's and Adolescents' Code (Decree-Law No. 26102), article 4, stipulates: “Every child or adolescent has a right to respect for his personal integrity. He may not be subjected to torture or to cruel or degrading treatment. Forms of enslavement are deemed to include forced labour and economic exploitation, together with child prostitution and dealing in, selling and trafficking in children and adolescents.”

15. It must be noted that the advent of terrorism has caused an escalation of violence and intimidation, with material and economic damage and loss of human life, aimed at paralysing the country's economic activities and thus destabilizing the democratic system. To cope with this situation and ensure domestic order, the Peruvian Government created, under Decree-Law No. 25475, a regulatory framework designated as Anti-terrorist Legislation in order to preserve the rule of law, democracy and public order and thereby ensure the defence and protection of the basic rights of the individual, enshrined in our Political Charter and in the major international human rights instruments.

16. At the same time, considering that article 2, paragraph 3 of the 1993 Constitution guarantees that: “Every person has a right: to freedom of conscience ... in the individual or collective spheres. No one may be persecuted on account of his ideas or beliefs. There are no crimes of opinion ...”, it cannot be asserted that “If the victim (of the crime of torture) is under prosecution for political offences the sentence shall not exceed 15 years' imprisonment”, as was proposed in a draft law, since in Peru there can be no prosecution for what is permitted under the Constitution.

17. With regard to the provision that no exceptional circumstances, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture, it may be noted that in the course of actual social and political events there sometimes arise exceptional, extremely grave situations which threaten the continued existence of the State and of society. In view of their extraordinary nature, such occurrences must be dealt with by the Constitution through specific provisions which are not precisely those applicable to normal situations. In such cases the Government assumes wider powers and may decree the suspension or limitation of the exercise by the citizens of certain fundamental rights.

18. Article 137 of the Constitution of Peru establishes rules governing states of exception, to ensure not only the resolution of the crisis, but also the return to constitutional normality in order to consolidate the permanence

implicit in the concept of Fundamental Law. This implies the adoption of rapid, effective and drastic measures, failing which the constitutional order or society itself are in imminent danger of demise. To that extent, specific constitutional rights may have to be suspended or restricted in order to ease the return to constitutional normality.

19. Under Supreme Decrees 062, 063, 064 and 068 DE/CCFFAA, published by the Official Gazette "El Peruano", during the months of November and December 1997 the areas indicated in the following table, representing in all 15.77 per cent of the national territory, were declared to be in a state of emergency, the remaining 84.23 per cent being under constitutional rule.

AREAS OF THE NATIONAL TERRITORY DECLARED TO BE IN A STATE OF EMERGENCY

Department	Areas concerned	Starting date	Termination date	Document
LIMA	District of Ate, Los Olivos, San Juan de Lurigancho, San Juan de Miraflores, San Luis, San Martín de Porres, Villa el Salvador and Villa María del Triunfo in the province of Lima	13 Dec 97	10 Feb 98	DS 067 DE/CCFFAA of 6 Dec 97
PASCO	Province of Oxapampa	30 Nov 97	28 Jan 98	DS 063 DE/CCFFAA of 25 Nov 97
JUNIN	Provinces of Satipo and Chanchamayo	30 Nov 97	28 Jan 98	DS 063 DE/CCFFAA of 25 Nov 97
HUANCAVELICA	Province of Huancavelica, Castrovirreyna and Huaytara	30 Nov 97	28 Jan 98	DS 063 DE/CCFFAA of 25 Nov 97
AYACUCHO	Provinces of Huamanga, Cangallo and La Mar	30 Nov 97	28 Jan 98	DS 063 DE/CCFFAA of 25 Nov 97
CUZCO	District of Quimbiri and Pichari in the province of la Convención	30 Nov 97	28 Jan 98	DS 063 DE/CCFFAA of 25 Nov 97
APURIMAC	Province of Chincheros	30 Nov 97	28 Jan 98	DS 062 DE/CCFFAA of 25 Nov 97

Department	Areas concerned	Starting date	Termination date	Document
HUANUCO	All the provinces (except those of Puerto Inca, Yarowilca and Dos de Mayo and the district of Huacrachucco in the province of Marañón)	30 Nov 97	28 Jan 98	DS 064 DE/CCFFAA of 25 Nov 97
HUANUCO	Province of Puerto Inca	26 Dec 97	28 Feb 98	DS 068 DE/CCFFAA of 19 Dec 97
SAN MARTÍN	All the provinces	30 Nov 97	28 Jan 98	DS 064 DE/CCFFAA of 25 Nov 97
LORETO	District of Yurimaguas in the province of Alto Amazonas	30 Nov 97	28 Jan 98	DS 064 DE/CCFFAA of 25 Nov 97
UCAYALI	Province of Coronel Portillo Padre ...	26 Dec 97	23 Feb 98	DS 068 DE/CCFFAA of 19 Dec 97

20. It must be added that the state of emergency declared in many areas of the national territory was rescinded in the early months of the present year.

21. With regard to the alleged application of methods involving torture by the anti-terrorist police (DINCOTE) in towns under a state of emergency, we have to report that the Peruvian State, faced with the extreme violence resorted to by the terrorist groups, found itself constrained to introduce exceptional measures such as special penal legislation and decree states of exception, as provided for in the Constitution, in certain regions of the national territory where the responsibility for maintaining internal order was entrusted to the security forces, which are accordingly performing the task of preventing disorder and protecting the citizenry, particularly with regard to the commission of crimes of terrorism.

22. The Peruvian State, confronted with the special situation created by the terrorist violence which infiltrated the population, particularly in the rural areas, and manifested in acts of insane brutality against the authorities and the defenceless population and in forcible abduction of many local residents for “recruitment” into the terrorist ranks, was compelled to take drastic action to cope with terrorism. These actions on the part of the State bore fruit with the break-up of the terrorist groups, the capture of many ringleaders and the seizure of many arms caches. But it also true that in this struggle some elements of the security forces committed excesses, which, as soon as they were detected, were investigated and punished.

23. These acts must be considered in their actual context: the state of exception is a specific reality limited to a particular geographical area, very small in comparison with the area comprising almost the entire country where constitutional rule remained in full and total force. Such incidents do not, therefore, in any way reflect a policy of systematic human rights violation on the part of the Peruvian State, since they occurred in the context of a temporary state of affairs now already in the past.

Article 3

24. Extradition is an international State-to-State instrument whereby, on submission of a formal request, one State obtains from another the handing over of a person accused or sentenced for an offence under ordinary law for criminal trial or execution of the sentence passed, in accordance with the pre-existing rules in force internally and internationally.

25. Thus article 37 of the 1993 Constitution lays down that extradition can be granted only by the Executive after prior consideration of a report from the Supreme Court, in conformity with the law and treaties and according to the principle of reciprocity. Extradition is not granted if it is considered to have been requested for the purpose of prosecuting or punishing a person on grounds of religion, nationality, opinion or race. Extradition is not applicable to persons prosecuted for political offences or related acts, which however are not deemed to include genocide, assassination of prominent persons or terrorism.

26. The principle of reciprocity is enunciated in our Constitution inasmuch as it provides that Peru may extradite persons to the territory of third States only if those States extradite persons accused of offences in Peru or, at least, if they are prepared to do so. Extradition implies the application of a procedure which is subject to specific regulations within each State. In Peru it is authorized by the Executive, but the Supreme Court has first to present a report explaining the legal background to the case. Again, there is a provision in our Fundamental Charter prohibiting the granting of extradition when it is deemed that the purpose of the request is to prosecute or punish a person on grounds of religion, nationality, opinion or race. In such cases Peru, by authorizing extradition, would be party to depriving that person of fundamental rights to which he is also recognized to be entitled under the Constitution. Accordingly, the prohibition laid down is a means of protecting within Peru the rights of this accused person, which our State guarantees to him as well as to any other human being, irrespective of his nationality, citizenship or capacity for office. The prohibition established is therefore fully appropriate.

27. Regarding expatriation and expulsion from the country, the Penal Code in force provides that, depending on whether Peruvians or aliens are concerned, those measures are applied after the custodial sentence has been served (art. 30), for a maximum duration of 10 years, and are admissible only for serious crimes. On the completion of the prison term, a person sentenced to expatriation or expulsion from the country is placed by the director of the penal establishment at the disposal of the competent authority for the carrying-out of the sentence.

28. With regard to expulsion from the country, refoulement or extradition of a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture, it must be stated that Directive No. 002-95-IN/DGGI/DGPNP determines that expulsion is admissible: (a) for clandestine or fraudulent entry; (b) by order of the competent judicial authority; (c) for non-fulfulment of the penalties of compulsory departure or termination of stay or residence, the person not having left the national territory. Likewise, article 1 of Act No. 24710 (Extradition) provides that a person prosecuted, accused or sentenced as the perpetrator of, or accessory before or after the fact to, an offence who is in the territory of another State may be extradited to stand trial or serve such sentence as was passed on him in his presence, the conditions, effects and procedure being governed by international treaties and by the present Act in the absence of relevant treaty provisions.

29. Concerning the existence of a persistent pattern of gross, flagrant or mass human rights violations, we must point out that in our country, as in any other State, there occur isolated cases of presumed human rights violations, but there are no grounds whatsoever for asserting that violations of the fundamental rights of individuals are a permanent or continuing reality. While situations of that kind do sometimes arise, there exist in our legislation the necessary mechanisms to allow the victim to appeal to the competent judicial body and have his claims upheld.

Article 4

30. Our Peruvian State, giving effect to what has been requested by the international agencies, and in particular seeking to ensure that every act of torture constitutes an offence under its penal legsilation, has put into effect Act No. 26926 of 21 February 1998, amending various articles of the Penal Code in force, and incorporated therein Section XIV-A on crimes against humanity, which includes article 321 specifying the crime of torture, whose wording is cited in the comments on article 1 in this report.

31. The Convention indicates that each State party must ensure that any attempt to commit torture and any act by any person which constitutes complicity or participation in torture are offences under its criminal law. Thus the categorization of the crime of torture in our system of penal law is to be interpreted as meaning that any attempt to commit torture is to be penalized by the court with an appropriate reduction of the penalty (article 16 of the Penal Code). In such a case, the attempt will not be punishable if the commission of the offence is rendered impossible by the total ineffectiveness of the means employed or the total inappropriateness of the object (P.C., article 17). Again, if the agent desists voluntarily from going foward with the perpetration of the offence or prevents the result from being achieved, he will be penalized only if the acts performed constitute offences in themselves (P.C., article 18).

32. With regard to the punishability of an attempted offence, our legislation confines itself to determining that reduced punishment for the attempt is the ruling principle adopted by the law. If the basis of the attempt resides in the effect produced on lawful property (in the form of damage, danger or disturbance caused to the owner of the legal property), when

the offence is not completed the degree to which the legal property is effected is always less and, consequently, the penalty must be lighter than that appropriate to a completed offence.

33. The process of committing the offence is the path taken by the punishable act, proceeding from the initial idea to the completion, via the preparation, commencement of commission, conclusion of the act of commission and production of the characteristic result. As a general rule, preparatory acts are unpunished, only the attempt and effective commission being indictable. In the attempt the agent initiates the commission of the offence directly, by objective acts, but the characteristic object of the offence is not fully attained. Completion is the full achievement of the characteristic act in all its aspects. Uncompleted forms of commission of the offence are reasons for extension of the penalty, broadening the penal deterrent provided for the completed offence to behaviours which are very close to completion and are engaged in with the intention of attaining it.

34. An attempt is thus an impectfectly achieved type of offence, since it has not reached completion; at the subjective level, the malice in an act of that type is the same as with a completed offence. The grounds for punishment of all uncompleted forms of commission of offences are the putting at risk of legal property and the wish to bring about the respective type of injury. Hence, only those acts which involve the putting at risk of lawful property or the wish to inflict a specific type of injury should be punished. Guided by this principle the Code declares unpunishable a totally inept attempt, in which commission of the act cannot take place owing to the total inappropriateness of the object at which the action is aimed or of the means employed (art. 17).

35. Likewise, in any act of terrorism, participation therein is imputed to all those who, while taking part in the crime, do not carry out the characteristic action; this accordingly extends to instigators and accomplices, since the actions of participants contribute to the commission of the offence by its perpetrator, but are not actions typical thereof in that they do not of themselves alone produce the action described in the definition (Penal Code, article 24).

36. With regard to complicity, article 25 of our Penal Code stipulates that whoso maliciously provides assistance for the performance of the punishable act, without which it would not have been perpetrated, shall be liable to the penalty prescribed for the perpetrator. Those who in any other way have maliciously provided assistance shall have their penalties appropriately reduced. Note that complicity has to be distinguished from co-perpetration, since the latter implies responsibility for the act on the basis of a joint agreement.

Article 5

37. Concerning acts that constitute crimes of torture and are committed in any territory, or on board an aircraft or ship registered in the State concerned, and specifically when the alleged offender is a national of that State or the victim is a national of that State, and the State considers it appropriate, article 1 of the current Peruvian Penal Code stipulates that

Peruvian law is applicable to anyone who commits a punishable act in the territory of the Republic, apart from the exceptions specified in international law. It is also applicable to punishable acts committed on public national ships or aircraft, wherever they may be, and private national ships or aircraft that are on the high sea or in airspace where no State exercises sovereignty.

38. Law being the expression of the sovereignty of the State, it must itself determine its own sphere of authority, the function of enforcement which must be carried within the State's own territory. In other words, the limits of the territory are also those of the law's authority.

39. Our penal legislation is grounded in various principles: that of territoriality, the principle of material need or defence, the principle of personality or nationality, and the principle of universality or worldwide justice. Alongside these there also exist some secondary principles, such as so-called “right of flag” and the principle of administration of justice by representation.

40. According to the principle of territoriality, the State punishes, in accordance with its laws, all offences committed within its territory, irrespective of who perpetrates them or against whom they are perpetrated. The principle of material need, defence or protection of the State punishes all actions directed against its interests, regardless of who has committed them and where. On the principle of personality or nationality, the State holds its nationals subject to its law even when they are abroad, irrespective of who is acting. In pursuance of the principle of universality or worldwide justice, the State holds its regulatory authority to extend to acts directed against the cultural interests of all States, by whomever, against whomever and wherever they are committed. The principle of right of flag places ships or aircraft navigating under the flag of the State on the same footing as the national territory; it is in fact an extension of the principle of territoriality. Lastly, according to the principle of administration of justice by representation, the interest of the foreign State is paramount and is protected by the State power exercised over the territory in which the individual is and to which extradition cannot be applied for de facto or de jure reasons.

41. According to article 54 of the 1993 Constitution, the territory of the Republic comprises the land, the subsoil, the maritime domain and the airspace above them; the State exercises sovereignty and jurisdiction in its territory. The Republic's maritime domain comprises the sea adjacent to its coasts, together with its bed and subsoil, to a distance of 200 nautical miles measured from the baselines established by law. In its maritime domain Peru exercises sovereignty and jurisdiction without prejudice to the freedom of international communications, in accordance with the law and the international treaties ratified by our State.

42. There exist exceptions to the above under international law: one is the concept of floating territory and the other is extradition. Thus, for example, Peru does not prosecute certain offences committed on its territory, leaving it to another country to judge and punish them. The term “floating

territory" is used to designate ships and aircraft which, inasmuch as they are subject to national sovereignty, are considered integral parts of the territory. Among those mentioned are:

(a) The public ships and aircraft of the Peruvian State, which form part of the national territory in whatever place or situation they may be; conversely, the public ships and aircraft of a foreign State which pass through Peruvian territory constitute foreign territory and Peru therefore cannot claim jurisdiction over offences committed on board; and

(b) Private ships and aircraft, which come within the jurisdictional domain of the State only when they are in national territory or on the high sea, and constitute foreign territory when they are in foreign waters, airspace, ports or airports.

43. Accordingly, determination of the place where the offence was committed is crucial to determining the law applicable in accordance with the principle of territoriality, when we are concerned with offences at a remove, i.e. offences whose moment of completion occurs in a different place from the one where the action was initiated or carried out.

Article 6

44. If the person who has committed the crime of torture is present within the territory, or should there be an attempt by any person to commit torture or any act that constitutes complicity or participation in the offence referred to, and if after examination of the available information it is considered that the circumstances so warrant, orders must be given for the arrest of the said person, or other measures taken to ensure his presence. In this connection, article 2, subparagraph 24 (f) of the Constitution states that every person has a right to personal freedom and security and that, consequently, no one may be arrested without a written warrant giving particulars issued by a judge, or the police in case of flagrante delicto. The detainee must be put at the disposal of the competent court within 24 hours or on the expiry of that time limit. The article goes on to say that this time limit does not apply to cases of terrorism, espionage or illegal drug trafficking, in which the police authorities may resort to pre-trial detention of suspects for a period not exceeding 15 calendar days, and must report thereon to the Public Prosecutor's Department and the judge, who may assume jurisdiction before that time limit expires.

45. Accordingly, pre-trial police custody for a period of not more than 15 days is authorized under the Constitution. Nevertheless, the detainees are not left helpless and without defence, thanks to the active participation of the Public Procurator's Department, whose representative, the Procurator, not only visits detention centres and arranges for the defence of detainees, but ensures that police inquiries do not exceed the legal limits. Any arrest is reported to the Public Procurator's Department and the court and it is from that time on that the Procurators carry out their task of monitoring and surveillance.

46. The pre-trial or investigation phase, provided for in article 72 of the Code of Criminal Procedure, is intended for the collection of evidence as to

the commission of the offence, the circumstances in which it occurred and the motives therefor, and for discovering its perpetrators and accomplices, determining which individual part they played in its preparation and execution or in subsequent actions designed to cover up the evidence that might be used for its detection, give assistance to those responsible, or profit in some way from its results.

47. The pre-trial proceedings are confidential in nature. The confidentiality ceases, however, when the results of the inquiry are made available to defending counsel for three days in the court so that he can take full cognizance thereof, whether or not he took part in the proceedings (Code of Criminal Procedure, article 73). As indicated in article 74 of that Code, the pre-trial proceedings may be initiated by the examining magistrate of his own motion, at the request of the Public Prosecutor's Department, upon complaint by the injured party or his family, or upon petition in the cases specified in the Code.

48. With regard to holding incommunicado, article 2, subparagraph 24 (g) of the Constitution states: “No one may be held incommunicado except in cases where it is essential to the elucidation of an offence, and then only in the manner and for the time provided for by law. It is the bounden duty of the authorities to report, without delay and in writing, the locality where the detainee is being held.” The police have been granted this power because of the enormous difficulties they face in their work owing to phenomena such as drug trafficking, terrorism, etc., in which the suspected criminals wrongfully exploit the principle of equality before the law.

49. This related right, which in the case under consideration protects the prisoner's right to defence, is enshrined in the Constitution inasmuch as its violation would entail: a manifest threat to his health or life, since he can be physically abused without anyone else knowing or being able to defend him; inability to exercise his right to be defended, not only by himself, but by his counsel as well; pressure upon him to admit responsibilities which under normal conditions he would not have accepted; and psychological damage due to being held incommunicado, which in itself constitutes a trauma for the prisoner.

Article 7

50. In a situation where there is present in the territory of a State party a person who has committed or attempted to commit torture or acts constituting complicity or participation in torture, and if that offence is committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State, or when the alleged offender or the victim is a national of that State, then, in a case where extradition is not warranted, the case is submitted to the competent authorities with a view to instituting proceedings.

51. Article 1 of the Penal Code states that: “Peruvian penal law is applicable to anyone who commits a punishable act in the territory of the Republic”, reflecting the principle of territoriality according to which the State punishes, in accordance with its laws, all acts committed within its territory, regardless of who perpetrated them or against whom.

52. In this connection, article 4 of Act No. 24710 (Extradition) provides that a person prosecuted, accused or sentenced as the perpetrator of, or accessory before or after the fact to, an offence committed in Peruvian territory who is in another State may be extradited to stand trial or serve any sentence that was passed on him in his presence. Peru may demand the extradition of persons who, having committed no offence in the national territory, are in the situation provided for where the offence concerned has been committed in some territory under its jurisdiction or on board an aircraft or ship registered in that State, or when the alleged offender or the victim is a national of that State.

53. As provided for in article 5 of the Act quoted, a person who has been prosecuted, accused or sentenced as the perpetrator of, or accessory before or after the fact to, an offence committed in a third State and who is in the national territory, whether as a resident, as a tourist or in transit, may be extradited to stand trial or serve such sentence as was passed upon him in his presence.

54. Except as provided for in article 6 of Act No. 14710, extradition shall not be warranted in the following cases:

1. If the requesting State has no jurisdiction or competence to try the offence;

2. If the person whose extradition is requested has already been acquitted, sentenced, reprieved or amnestied;

3. If the prescription time for the offence or the penalty has elapsed, according to Peruvian law or that of the requesting State, provided that the time limit established in Peruvian legislation must not be exceeded;

4. If the person extradited would have to face a court of special jurisdiction in the requesting State;

5. If the penalty prescribed for the offence is less than one year's imprisonment;

6. If the offence is purely one of anti-religious militancy, politics, press or opinion. If the victim of the punishable act concerned exercises political functions, that fact on its own does not constitute sufficient grounds for designating the offence as political, and the same applies if the wanted person exercises political functions.

7. For an offence indictable only at the demand of a party, except in cases of rape;

8. For infringements of monetary and fiscal legislation which do not constitute ordinary crimes;

9. For petty misdemeanours.

55. Article 7 of the Act cited provides that extradition shall not be granted if the offence for which it is requested is considered as a political or related one. The same rule applies if there is good reason for supposing that the request for extradition on grounds of an infringement of ordinary law was submitted with the intention of prosecuting or punishing an individual for reasons of race, religion, nationality or political opinion and that that individual's situation is liable to become more difficult for one or another of those reasons.

56. Should Peru refuse extradition, it can put the accused on trial, in which case it will ask the requesting State to make the relevant evidence available (Act No. 14710, article 8). The decisions taken shall be governed by the same conditions as are applicable to any serious offence under our legislation.

57. In this connection, article 139, paragraph 3, of our Constitution states that the principles and rights of the jurisdictional function include observance of due process and jurisdictional surveillance. Nobody may be turned away from the jurisdiction predetermined by law, nor subjected to a procedure different from those previously established, nor tried by organs of special jurisdiction or special commissions set up for the purpose, whatever they may be called.

Article 8

58. According to article 1 of Act No. 24710 (Extradition) a person prosecuted, accused or sentenced as the perpetrator of, or accessory before or after the fact to, an offence who is in another State may be extradited to stand trial or serve such sentence as was passed on him in his presence. Article 3 of the same Act recognizes, as an exception, extradition on a reciprocal basis within a framework of respect for human rights, which may be interpreted as meaning that the crime of torture may give rise to extradition.

59. The Convention is quite clear in stating in this article that, where a State party makes extradition conditional on the existence of a treaty, if it receives a request for extradition from another State party with which it has no treaty on the subject, it may consider the Convention as the necessary legal basis for extradition in respect of such offences. Extradition is to be subject to the other conditions provided by the law of the State receiving the request.

60. On this matter, article 37 of our 1993 Constitution states: “Extradition can be granted only by the Executive after prior consideration of a report from the Supreme Court, in conformity with the law and treaties and according to the principle of reciprocity. Extradition is not granted if it is considered to have been requested for the purpose of prosecuting or punishing a person on grounds of religion, nationality, opinion or race. Extradition is not applicable to persons prosecuted for political offences or related acts, which however are not deemed to include genocide, assassination of prominent persons or terrorism.”

Article 9

61. The treaties or agreements concluded by Peru with other States on legal assistance in connection with criminal proceedings are as follows:

(a) The Agreement on legal assistance in connection with criminal proceedings between the Republic of Peru and the Republic of El Salvador, signed in Lima on 13 June 1996 and ratified by Supreme Decree No. 029-96-RE of 26 July 1996;

(b) The Agreement between the Republic of Peru and the Republic of Colombia on legal assistance in connection with criminal proceedings, signed in Lima on 12 July 1994 and approved by Supreme Decree No. 24-94 RE of 2 August 1994 on the basis of Note No. RE(JUR)6-8/31 of 3 August 1994.

62. Under these agreements, each party undertakes to provide the other, in accordance with its domestic legislation and on the basis of the agreements, with the broadest possible assistance in the development of criminal judicial procedures. They also provide for broader cooperation in respect of the expulsion, deportation and the handing over of nationals of the requesting State against whom proceedings have been brought and who are illegally in the territory of the States parties. Such assistance comprises:

(a) The collection and transfer of the evidence and records of judicial proceedings requested;

(b) The transfer of documents and information in accordance with the provisions and conditions of the agreement in question;

(c) The notification of judicial decisions, orders and sentences;

(d) Ascertaining the whereabouts of and making available, on a voluntary basis, witnesses or assessors in accordance with the agreement in question;

(e) The preparation of expert reports and the carrying out of seizures, attachments, sequestrations, impoundment of assets, attachments as well as identifying or tracking down the proceeds of assets or of articles used in the commission of an offence; on-site investigations and registers;

(f) The requested and requesting States divide the property seized or the proceeds of the sale equally, provided that effective collaboration exists between the two States. The sale of seized property takes place in accordance with the procedure laid down by law, providing that such sale is not prohibited in the requesting country;

(g) Facilitating the entry and permitting the free movement, within the territory of the requested State, of officials of the requesting State, subject to the authorization of the competent authorities of the requested State, with a view to implementing the provisions of the agreement in question, and provided that such action is permitted by the domestic legal order of the requested State. And any other assistance agreed to between the parties.

63. The Agreement between the Republic of Peru and the Republic of Bolivia on legal assistance in connection with criminal proceedings, signed in Lima on 27 July 1966, in addition to the obligations assumed previously in the agreements between the Republic of El Salvador and the Republic of Colombia, states that the parties undertake to provide one another with the broadest possible cooperation in the frontier zone as follows:

(a) If a national of one of the parties who is being sought by the judicial authorities of his country under a measure depriving him of his liberty has entered the frontier zone of the other State party in order to evade that measure he is to be deported or expelled from the State in which he happens to be by the competent authorities and taken to the frontier to be handed over to the authorities of the requesting State. Such action is to be taken in accordance with the Aliens Regime in force in each State so that the rights and guarantees of the person concerned may in every case be respected;

(b) If the central authorities of either of the States parties receive a request for assistance, it is to be transmitted immediately, together with relevant documentation, to the officials responsible for immigration control, to enable them to take the necessary action as rapidly as possible to deport or expel the alien and hand him over to the authorities of the requesting State.

64. The Agreement between the Republic of Peru and the Republic of Paraguay on legal assistance in connection with criminal proceedings (signed in Asunción on 7 August 1996, ratified by Supreme Decree No. 039-96-RE of 2 October 1996, and in force since 1 December 1997) and the Treaty on legal assistance in connection with criminal proceedings between the Government of the Republic of Peru and the Government of the Italian Republic, (signed in Rome on 24 November 1944 and ratified by Supreme Decree No. 048-96-RE of 11 December 1996) are designed to increase cooperation in matters of legal assistance in connection with criminal proceedings and strengthen the obligation to provide assistance, including:

(a) Notification of subpoenas and judicial decisions;

(b) The questioning of persons accused of offences or witnesses;

(c) The organization of activities with a view to collecting evidence;

(d) The transfer of persons in detention for purposes of providing evidence;

(e) The preparation of expert reports and the carrying out of seizures, attachments, sequestrations, the impoundment of assets, attachments as well as identifying and tracking down the proceeds of assets or articles used in the commission of an offence; inspections and registers;

(f) The communication of judgements in penal proceedings and court record certificates, as well as information concerning sentences and prison privileges.

Such assistance does not include the enforcement of penalties or punishment.

65. The Treaty on legal assistance in connection with criminal proceedings between the Republic of Peru and the Swiss Confederation, signed in Lima on 21 April 1997 and ratified by Supreme Decree No. 025-97-RE of 26 June 1997, was concluded with the firm objective of establishing effective cooperation in the prosecution, trial and punishment of offences, as follows:

(a) The parties undertake, in accordance with the provisions of the Treaty, to provide one another with the broadest possible legal assistance in any proceedings involving offences punishable by the judicial authorities of the requesting State;

(b) Legal assistance comprises measures connected with criminal proceedings in the requesting State, and in particular:

(i) The taking of evidence and other statements;

(ii) The submission of documents, including bank documents and orders or elements of proof;

(iii) Exchanges of information;

(iv) The register of persons, domicile, etc.

(v) Enforcement measures, including the lifting of bank secrecy;

(vi) Precautionary measures;

(vii) The transmittal of court orders;

(viii) The handing over of persons detained for hearings.

Article 10

66. Peru ensures that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials 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.

67. For this purpose, the Ministry of the Interior relies on its Permanent Secretariat of the National Human Rights Commission, which draws up policy guidelines that must be observed by officials, the civil and police authorities of its sector's Human Rights Office responsible for receiving complaints and/or investigating cases of alleged human rights violations. To this end, the Ministry of the Interior approved, by Ministerial Resolution of 16 February 1994, the “Procedures for the acceptance, investigation and settlement of complaints of human rights violations” which must be complied with by all bodies subordinate to the Ministry.

68. In accordance with Supreme Decree No. 05-95-JUS, as amended by Supreme Decree No. 08-95-JUS, establishing the regulations of the National Human Rights Council, it is the duty of the latter, in accordance with

article 10 (f), to organize and carry out training programmes and campaigns to sensitize public opinion on the basis of instruments for the protection of human rights.

69. The fact that progress in matters of pacification goes hand in hand with respect for the rights of individuals has recently been clearly demonstrated by the considerable decline in the number of complaints of enforced disappearance or arbitrary detention - which until a few years ago were foremost in the minds of the public both at home as well as at the international level.

70. The full exercise of civil and political rights has become a given in recent years, since military action against the last remnants of terrorist centres in national territory is carried out in strict compliance with relevant provisions on the subject and in conformity with the requirements laid down in the education and training programmes for the armed forces and the national police, including Laws Nos. 24973 and 25211, Directives Nos. 023-MD-SGMD, 05-MINDEF, 001-EMFFAA/DDHH, 025-CCFFAA-D3-1E, 01-COFI-DOP/PLN, 011-CCVFFAA-D3/IE, as well as the standards set out in the “Ten Commandments of the Forces of Law and Order” and the manual entitled “Human Rights: Principles, Standards and Procedures” at present in force and which were described in detail previously.

71. The training and advanced training of members of the armed forces, as well as work connected with the formulation of guiding principles, entail the teaching of Peru's Constitution and of agreements and conventions on the protection and promotion of human rights.

72. In the case of the National Police, for example, training has been provided for the officials of the National Human Rights Commission of the Ministry of the Interior, together with other senior officials of the forces of law and order, judges, procurators and officials of the diplomatic service in the “Extension Course on Democracy and Human Rights”, organized by the Institute of International Studies (IDEI) of the Papal Catholic University of Peru, under the auspices of the Organization of American States.

73. Human rights teaching has been included in the curriculum for police officers both in respect of the vocational training of officers and NCOs as well as in various training, specialization and advanced training courses; this subject will be mandatory at all education and training centres of the Peruvian National Police (PNP). The number of members of the PNP who have received such training is as follows:

Level 1: Training	
Officers	578
NCOs	760
PNP specialists	74
Subtotal	1,142

Level 2: Training	
Officers	2,357
NCOs	2,883
PNP specialists	612
Subtotal	5,852
Specialization	
Officers	259
NCOs	262
Subtotal	521
Level 3: Advanced training	
Commandants and majors	199
Senior officers	20
Captains	235
Subtotal	454
Level 4: Investigation	
Colonels	41
Subtotal	41
Grand total	8,280

Article 11

74. Peru's legislation contains provisions on interrogation methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

75. One of the institutions for the protection of rights created under the Convention against Torture is the Office of Ombudsman. Law No. 26520, namely, the Ombudsman Organization Act, proclaims as a general principle that the function of this institution is to protect the constitutional and fundamental rights of the individual and the community and to monitor compliance with the obligations of the State administration and the performance of public services. Article 9, paragraph 1, of this Law states that the Ombudsman is authorized to initiate and pursue, either of his own motion or on the application of a party, any investigation likely to elucidate the acts and decisions of the State administration and its agents which, as a result of the unlawful, defective, irregular, dilatory, abusive or excessive, arbitrary or negligent exercise of their functions, affect the full exercise of the constitutional and fundamental rights of the individual and the community.

76. In this sense, the Ombudsman is an agent who, without having legal enforcement powers, exercises political power enabling him to conduct any investigations necessary and uses the power of public opinion to get administrative bodies to implement fundamental rights.

77. In principle, the right to freedom and personal security are recognized by Peru's Constitution, article 2, paragraph 24 (f) stating that a person may be arrested only on the basis of a written order, indicating the grounds for the arrest, of a judge or by police authorities in cases of flagrante delicto. Under article 82 of the Code of Penal Procedure, the director of the establishment to which the detainee has been transferred must immediately, at the time of the arrest, inform the examining magistrate or, in his absence, the Public Prosecutor's Department of the arrest in writing and is held liable for arbitrary detention if he fails to make such notification within 24 hours of the arrest.

78. The 24-hour time limit referred to above may be extended in cases of terrorism, espionage and drugs trafficking and the person in question remanded in custody for 15 days providing that the authorities inform the Public Prosecutor's Department and the competent judge, who may assume jurisdiction before this period has elapsed in order to assume control of the investigation.

79. According to article 159 of the Constitution, the National Police are required to comply with the writs of the Public Prosecutor's Department, represented by the procurator, in the performance of their duties; in other words, they are required to monitor and take part in the investigation of the offence from the outset, so as to ensure that the criminal proceedings initiated are conducted in accordance with the law.

80. When the provincial criminal procurator has been informed that a person accused of a crime has been arrested by the police, he contacts the detainee personally, or through his deputy or a duly authorized court officer in order to ensure, among other things, his right to defence in accordance with the Constitution and legislation in force.

81. If the provincial procurator taking part in the police investigation acts in bad faith or negligently, the senior procurator may order his removal and must immediately submit a report to the Attorney-General of the Nation.

82. Moreover, the regulations on the structure, organization and purpose of the National Register of Detainees and Persons Sentenced to a Custodial Penalty (RENADESPPLE), established by Law No. 26295, state that the Ministry of the Interior is required, within 24 hours, to provide relevant information to RENADESPPLE on persons arrested for the alleged commission of offences and detained in police establishments possessing prevention, investigation and indictment functions; this procedure helps to prevent arbitrary detention, enforced disappearance, torture and extrajudicial executions on the basis of a computerized scheme for monitoring arrests by the forces of law and order.

83. The RENADESPPLE system comprises a Committee for the Coordination of the National Register of Detainees, presided over by a representative of the Public Prosecutor's Department and consisting of representatives of the Office

of the Ombudsman, the Ministry of Justice, the Ministry of the Interior, the Ministry of Defence, the Judiciary and the Human Rights and Pacification Commission of the Congress of the Republic, in accordance with article 2 of Law No. 26900 of 15 December 1995, which transferred RENADESPPLE from the Office of the Ombudsman to the Public Prosecutor's Department.

84. Another of the provincial criminal procurator's functions is to visit penitentiary and pre-trial detention centres to look into complaints and requests from prisoners awaiting trial or serving a sentence concerning their legal situation and respect for their constitutional rights. In each case, the procurator is required to submit a report together with the relevant records to the senior criminal procurator without prejudice to the adoption of the necessary legal measures.

85. Lastly, the Executive Committee of the Public Prosecutor's Department and its Investigations Institute organized a workshop entitled “The role of the deputy procurator in police investigations”, held in Lima in the first quarter of 1998, participants being required to submit a report to the Public Prosecutor's Department to which they were attached and a copy to the Investigations Institute. Its main purpose was to provide procurators with professional and ethical training to ensure that they performed their functions in strict compliance with the law.

Article 12

86. Peru ensures that, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction, the competent authorities proceed to a prompt and impartial investigation.

87. In this connection, article 159, paragraph 4 of the Constitution states that it is the duty of the Public Prosecutor's Department to initiate the investigation of an offence. To this end, the National Police are required to comply with the writs of the Public Prosecutor's Department in the performance of their duties. The investigation is conducted by the procurators who are directly responsible for all the judicial formalities connected with this task.

88. This is provided for by article 59 of the Code of Penal Procedure, which states that it is the duty of the judicial police to assist in the administration of justice by investigating offences and minor offences and to identify the offenders and place them at the disposal of magistrates, together with elements of proof and any effects which have been seized. Members of the judicial police participating in the investigation of an offence or minor offence are required to transmit to the examining magistrate or justice of the peace an affidavit containing all the information that has been collected and specifically indicating the physical characteristics of the accused - present or absent - name and alias, occupation, effective domicile, personal history and any other information required for purposes of identification, and to annex any expert opinions that have been drawn up (article 60 of the Code of Penal Procedure).

89. Article 61 of the Code states that the affidavit is to be approved by the official who directed the investigation. Persons who participated in

various stages of the investigation are required to sign those parts of the affidavit for which they are responsible. If they are unable to sign, their fingerprints are affixed to the document. As soon as the investigation is initiated, the judicial police place the detainees and any effects connected with the offence at the disposal of the magistrate without prejudice to their ongoing work of elucidating the facts (art. 63). In this case, examining magistrates or justices of the peace, members of the Public Prosecutor's Department and correctional courts may order judicial police officers to issue the necessary summons and make the arrests required to ensure the appearance of the accused, witnesses and assessors, and also issue in-house instructions to ensure more efficient investigation of the offence and its perpetrators (art. 64).

90. The purpose of the investigation is to gather evidence concerning the offence, the circumstances in which it was committed, and the motives behind it, and also to identify its perpetrators and their accomplices, a distinction being made between their participation in preparations, its execution and after the event, either to dispose of evidence that could lead to its discovery, to provide assistance to the perpetrators or to benefit in some way or other from the offence itself.

91. All this implies determination on the part of the State to ensure the efficient functioning of the machinery and bodies comprising its judicial system, namely, the Ministry of the Interior, the Ministry of Justice, the Judiciary and the Office of the Ombudsman, which must all perform their functions scrupulously in the interests of a rapid and impartial investigation.

92. Furthermore, forensic examination procedures for the detection of injuries or deaths resulting from torture were approved by Administrative Resolution No. 523 97-SE-TP-CEMP of 3 November 1998. As has been mentioned above, Law No. 26926 amended various articles of the Penal Code and Section III of its Title XIV-A on crimes against humanity refers to the crime of torture; article 40, paragraphs 4.1 and 4.2, of that Section specify procedures for the forensic examination of the victim, in connection with which the participation of the forensic surgeon in the examination of the victim of torture makes it necessary to establish criteria for such examinations and to include in the Forensic Procedures approved by Administrative Resolution No. 523-97-SE-TP-CEMP of 16 October 1997 the above forensic examination procedures for the detection of injuries or death resulting from torture, which must be complied with by all departments of Peru's Institute of Forensic Medicine.

Article 13

93. Any individual who alleges he has been subjected to torture has the right to complain to, and have his case promptly and impartially examined by, the competent authorities. In this connection, article 200, paragraph 1, of Peru's Constitution recognizes the remedy of habeas corpus as a constitutional guarantee that can be invoked by any person in respect of the act or omission of any authority, official or individual which infringes or threatens individual freedoms or related constitutional rights.

94. A person who is subjected to torture (or to inhuman or degrading treatment) or any other person on his behalf is entitled to invoke the remedy habeas corpus under article 2 of the Constitution: “Every person has the right: l. To life, to his identity, to his moral, spiritual and physical integrity, and to his unrestricted development and well-being. Everything conducive to the realization of this principle is a matter of right; 24. To personal freedom and security. Consequently: ... (h). No one may be subjected to moral, psychological or physical violence nor to torture or cruel or degrading treatment. Anyone may request the immediate medical examination of an injured person or of a person unable to petition the authorities himself. Statements obtained through violence are invalid. Whoever employs violence shall be held accountable for his acts.”

95. It may be added that Peru, in conformity with the provisions of the above article, has embodied in its penal legislation article 321 which, as a result of Law No. 26926, deals with the crime of torture, that it describes as an act for which not only individuals, but also officials and public servants, may be held accountable. Article 5 of the Law mentioned above states that proceedings in respect of this crime against humanity may be brought in the ordinary manner and before the ordinary courts.

96. Moreover, the Penal Code defines the violation of personal freedom, which is recognized in the Constitution and, in accordance with article 152 of the Code which states that the acts of a person who abuses, corrupts, treats with cruelty or endangers the life or health of another constitute aggravating circumstances, any person has the right to complain in any way whatever to the authorities if he has been deprived of his freedom in an unlawful manner.

97. Complaints may similarly be lodged in respect of such acts under article III of the Preliminary Title and article 14 of the Code of Penal Enforcement by a victim who is serving a custodial sentence.

98. Clearly, therefore, the Peruvian judicial system offers adequate remedies enabling any individual to petition judicial bodies for the enforcement of the rights guaranteed by the Constitution, which proclaims the principle of the jurisdictional plurality of instances as constituting a guarantee of great importance that eliminates the risk of judicial errors by ensuring that any decision is subject to at least one review by a higher judge or court; moreover, when domestic remedies have been exhausted, the case may be referred to international courts or bodies created under treaties or conventions to which Peru is a party, in accordance with article 205 of the Constitution.

99. In addition, any individual has the right to complain to the Public Prosecutor's Department in respect of the acts defined in articles 128, 151, 152, paragraphs 1 and 10, 153 and 153A of the Penal Code. If the individual in question is serving a custodial sentence, he may do so in accordance with article III of the Preliminary Title and article 14 of the Code of Penal Enforcement.

100. Guarantees are provided for the right of every citizen to effective legal protection before the courts and to petition the competent magistrate to

have an offender desist from acts that could result in actual torture and, in any event, if torture has been perpetrated to have the offender punished by the imposition of a custodial sentence.

Article 14

101. Despite the absence of specific machinery enabling a victim of an act of torture to obtain compensation, Peru makes the necessary arrangements in connection with the expenditure incurred by his rehabilitation. In the event of an individual's death as a result of torture, his dependents are entitled to compensation.

102. Articles 92 et seq. of the Penal Code accordingly establish the right to civil damages in criminal cases - a subject on which the judge reaches a decision at the time of sentencing.

103. In Peru the impartial identification of the perpetrator of an offence and determination of his responsibility reflect a long legal tradition. The Penal Code states that responsibility is to be determined in accordance with the provisions of the Civil Code, in accordance with articles 1969 et seq. of which it is applied subjectively, although it is on the basis of those provisions that the objective determination of guilt is established as a criterion and the burden of proof inversed. In other words, the person accused of torture must prove that his act is not connected in any way with the injuries sustained by the victim.

104. Thus, even if the person suspected of committing torture is found not guilty of the crime because it is established that the action of the accused did not cause the injuries sustained by the victim, the latter is entitled to both financial as well as moral compensation.

105. One point to be borne in mind is the preventive function of liability in tort, since the amount of compensation decided upon by the judges, although in many cases not making good the injuries sustained (loss of life for example), is intended to send a message to society discouraging the practice of torture.

106. This compensation comprises the restitution of property or, where this is not possible, payment equivalent to the value of the property and compensation for damage. In the case of restitution, it is the original property that is restituted, even if it is in the possession of third parties, without prejudice to their right to claim its value of others. If the criminal act was committed by two or more persons, they, together with third parties responsible under civil law, are all equally liable for the payment of civil damages.

107. When the judge pronounces sentence and fixes the amount of civil damages payable to the victim, the convicted person is under an obligation to pay the amount indicated. In the event of his death, this obligation is transferred to his heirs to the full extent of his estate; similarly, the right to damages is acquired by the heirs of the victim.

108. Another aspect of civil damages as a result of an unlawful act is that the judge may, as a preventive measure, impound the property of the convicted

person to the extent necessary to cover the amount of the damages. He may do this at any stage during the trial. When the judge draws up the order of impoundment, the convicted person must indicate which of his property is to be used for this purpose; if he fails to do so, his property is attached.

109. The convicted person is entitled to substitute security or a guarantee in rem sufficient to cover his liability for impoundment; he may also opt for deposit, intervention or retention. If the condemned person has no realizable property, the judge orders that up to one third of his salary is to be used to pay civil damages. If a criminal indemnity action is brought against third parties, it is initiated if the sentence handed down in the criminal proceedings does not affect them. The criminal indemnity action derives from the punishable act and is not extinguished so long as the criminal action exists.

Article 15

110. No statement made as a result of torture can be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

111. In this connection, the penultimate sentence of article 2, paragraph 24 (h), dealing with personal freedom and security stipulates that statements obtained through violence are invalid and adds that “Whoever employs violence shall be held accountable for his acts.” In other words, evidence obtained by the use of force against the accused or defendant, including statements obtained as a result of psychological pressure, namely, subjecting the individual to mental pressure and thereby depriving him of the power of discernment, like physical violence, namely, causing injuries to an individual's body, invalidates these statements as evidence since they are of questionable value and therefore cannot be accepted as truthful owing to the manipulation of the accused or defendant. The Constitution extends the scope of this provision by not only invalidating such statements but also providing for the punishment of the person responsible for these acts.

112. Although this Constitutional provision does not expressly stipulate that statements obtained under torture are invalid this is implied by the fact that those obtained through violence are invalid, since torture is an aggravating circumstance. According to the Peruvian Constitution, this consists of systematic and organized ill-treatment carried out deliberately and in a premeditated manner in order to cause not only injury but also suffering.

113. Article 129 of the Peruvian Code of Penal Procedure states that confessions obtained under torture are without evidential value and adds that they must be made by an individual of his own free will and in possession of his normal mental faculties.

114. A contrariu sensu interpretation of this provision reveals that a confession lacks evidential value if it is not made freely and is the result of the psychological conditioning of the individual.

115. Furthermore, the second paragraph of article 191 of the Code of Penal Procedure states that only elements of proof that are pertinent, appropriate, legitimate and useful are admissible, which implies that statements obtained

under torture are not admissible since they lack legal standing. Similarly, article 195 states that any form of proof, to be valid, must have been obtained by lawful means and in accordance with the law, and offers additional guarantees of the evaluation and admissibility of evidence - in this case the evidence of the individual in question.

116. In our view, the reservation contained in the article with respect to the Convention is appropriate, since it reflects the ratio legis of the provision which is the protection of the victim who has been tortured in order to obtain a statement, and consequently the responsibility of the perpetrator who is to be punished on the basis of this evidence, which will prove that the statement was in point of fact obtained in this way.

117. According to article 55 of Peru's Constitution, the treaties to which the State has acceded and which are in force are part of domestic law. Similarly, the Convention against Torture, which deals with an aspect of human rights, has been approved by Congress and ratified, in accordance with article 56, paragraph 1 of the Constitution. In this sense, the Convention is part of natural law and governs matters relating to evidence in criminal proceedings, to which article 15 of the Convention is therefore applicable.

Article 16

118. Peru prohibits, in any territory under its jurisdiction, other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

119. Peru, on the basis of its sovereignty, is in a position to exercise jurisdiction throughout its territory, and in accordance with the principles embodied in the Convention subscribes to its provisions that prohibit any act constituting cruel, inhuman or degrading treatment or punishment not amounting to torture, despite the fact that the Constitution does not specify the characteristics of the perpetrator; in other words, such acts may be committed by any person, whether a public official or not, article 2, paragraph 24 (h) stating that “No one may be subjected to moral, psychological or physical violence or to torture or inhuman or degrading treatment ...”. Law No. 26926 of 21 February 1998 characterizes the person committing the crime of torture as an official or public servant or any other person acting with their consent or acquiescence. It may be mentioned that the above article of the Constitution not only prohibits torture but also any other kind of physical or psychological duress, such as inhuman or degrading treatment. The protection provided by Peruvian legislation is clearly quite broad and is hedged about by considerable guarantees, since inhuman or degrading treatment demeans the individual.

Articles 21 and 22

120. Peru is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was approved by Legislative Resolution No. 24815 of 12 May 1998, ratified on 14 June 1998 and deposited on 7 July 1998.

121. The possibility of making the declaration referred to in articles 21 and 22 of the Convention is being examined in accordance with internal procedures by the authorities concerned with a view to Peru's adopting a position on the propriety of doing so.

122. Peru wishes to emphasize in this connection that considerable progress has been made in examining and evaluating this question and that the incorporation of the crime of torture in Peruvian legislation in the past few months constitutes a first step towards the declaration to be made under articles 21 and 22. Peru considered it desirable in the initial stages to define the practice of torture as a crime without prejudice to the fact that the crimes of enforced disappearance and genocide were also incorporated in its legislation at the same time.

123. Peru should not be faulted for failing to recognize the competence of this important Committee since it has observed that most of the complaints directed against the State alleging violations of human rights do not meet the requirement of the exhaustion of other remedies offered by human rights treaty bodies, whose competence and jurisdiction has been recognized at considerable cost to Peru.

124. It may be added that Peru consistently cooperates with the Special Rapporteur of the United Nations Commission on Human Rights on the question of torture as well as with all international human rights protection bodies. Its replies to their inquiries relating to individual cases of alleged torture and ill-treatment have made it possible to consolidate human rights teaching and education procedures pending the extension of the Committee's activities to Peruvian cases. During this initial stage it has been found desirable, as mentioned above, to define the criminal nature of torture and to continue examining possibilities of Peru's making the declaration called for under articles 21 and 22 in the near future.
