



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

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COMMITTEE AGAINST TORTURE

Thirty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 700th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 3 May 2006, at 3 p.m.

Chairperson: Mr. MAVROMMATIS

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Fourth periodic report of Peru (CAT/C/61/Add.2; CAT/C/PER/Q/4; written replies distributed in the Committee room, in Spanish only) (continued)

1. *At the invitation of the Chairperson, the members of the delegation of Peru took places at the Committee table.*

2. The CHAIRPERSON invited the delegation of Peru to reply to the questions put by members of the Committee.

3. Mr. TUDELA (Peru) said that the delegation of Peru would reply to the Committee members' questions by clusters of issues. Concerning the administration of justice and, in particular, the judiciary, the independence of judges and prosecutors had been strengthened by the fact that 90 per cent of them had been given tenure. The problem arising from the evaluation process for judges organized every seven years, which, as it could lead to their removal from office, weakened their independence, had been considered by the legislature during the debate on the Constitution held between 2002 and 2004; however, no decision had been taken on the subject. It was to be noted that there was no provision for juries in the Peruvian legal system.

4. Turning to the reform and strengthening of the judicial system, he recalled that, since the judgement handed down by the Constitutional Court on 3 January 2003, civilians could no longer be tried by military courts and that there were plans to set up a chamber in the Supreme Court to deal specifically with cases concerning military personnel and police officers. A process of judicial reform had been launched with the support of international financial institutions and the European Union on the basis of proposals made by the special commission set up to review the national plan for the comprehensive reform of the judicial system ("Comisión especial de estudio del plan nacional de reforma integral de la administración de justicia" - CERIAJUS). One of the main results of that reform process was the new Code of Criminal Procedure, which would first be applied in July 2006 in the district of Huaura, then gradually throughout the rest of the country. It provided for the replacement of the inquisitorial model and written proceedings by the accusatorial system and oral deliberations, which should lead in the not too distant future to a more efficient and rational justice system in the country.

5. Mr. BURNEO-LABRÍN (Peru) said that the rules of procedure of the National Council of the Judiciary had been amended so that henceforth that body was required to give reasons for its decisions. In accordance with the provisions of the new Code of Constitutional Procedure, *amparo* proceedings could be instituted against such decisions, as reflected in existing case law. In addition, several applications to reinstate judges who had been arbitrarily removed from office by the National Council of the Judiciary had been lodged with the Inter-American Court of Human Rights and had resulted in a friendly settlement.

6. With regard to the role of the Public Prosecutor's Office, human rights violations, including torture, came exclusively within the competence of prosecutors belonging to that Office; in conflicts of jurisdiction between military and ordinary courts, the Supreme Court had always come down on the side of the latter.

Prosecutors had free access to army and police premises to conduct investigations, which in no way prevented a parallel internal administrative investigation for disciplinary purposes, without prejudice to the criminal action. The acts of prosecutors in the lower courts could be appealed against through the Public Prosecutor's Office. As the decisions of the latter did not have the force of *res judicata*, the existence of fresh evidence could be a ground for reviewing a case. In cases where the right of due process had been violated, the victim could institute *amparo* proceedings.

7. Furthermore, the Public Prosecutor's Office had put in place a supporting information system in which were registered all criminal complaints, including those concerning acts of torture. So far, the system covered only the city of Lima, representing one third of the country's population. There was also a national register of detainees which was freely accessible to all citizens.

8. In the matter of judicial decisions punishing the perpetrators of acts of torture, the Government was aware that there were not enough convictions for such acts; that was because of the amnesty laws granting total impunity to torturers which had been adopted at a particular time in the country. However, the decision of the Inter-American Court of Human Rights declaring those laws to be without legal effect, which had had considerable repercussions in Latin America, was being gradually implemented by the Peruvian courts. In particular, in a recent judgement, the Constitutional Court had firmly stated that human rights violations were not subject to a statute of limitations.

9. The Office of the Human Rights Ombudsman was an autonomous institution whose task was to conduct non-judicial investigations into human rights violations, including torture, and to communicate its findings to the Public Prosecutor's Office with a view, where appropriate, to legal action. It had carried out two major investigations, one concerning unlawful acts committed against recruits during military service between 1998 and 2002, and the other relating to acts perpetrated by the police. In those two investigations, it had managed to identify suspects and determine the dates of the facts. Moreover, the Office had drawn up an operational protocol specifically focusing on torture, which was mainly applied in prisons. The text of the protocol was available on the Ombudsman's website and had been widely distributed to the establishments concerned throughout the country.

10. Mr. TUDELA (Peru) said that, pursuant to a decision of the Constitutional Court that was binding on all judicial organs, the amnesty laws had been declared incompatible with the American Convention on Human Rights and eliminated from the domestic legal system. Furthermore, according to Peruvian legislation, abuse of power was an administrative offence. In the Peruvian legal system, all ordinary criminal offences were subject to a statute of limitations, with the exception of human rights violations; that had been established since the judgement handed down on 18 March 2004 by the Constitutional Court in the *Genaro Villegas Namuche* case, in which the Court had concluded that all human rights violations committed by military personnel and, generally, all crimes against humanity were imprescriptible and members of the armed forces suspected of such acts could not be tried by military courts. He noted, lastly, that the department specially responsible for human rights in the Public Prosecutor's Office was examining violations committed during the period 1980-2000.

11. Mr. BURNEO-LABRÍN (Peru) said that, in the legislation of Peru, torture was defined by the purposes to be served, namely: obtaining a confession or information, punishment, intimidation or coercion. Discrimination was not included in that definition, but the Government had duly noted the related concerns expressed by the Committee and would see to it that the draft revised Penal Code, which was currently being examined by the legal commission of Congress, was amended to include the discrimination element in the definition of torture.

12. With regard to sexual violence, it was planned to include rape as a separate offence, distinct from torture, in the draft new Penal Code, in accordance with article 7 of the Rome Statute. As for the compensation paid to victims of torture, it was to be noted that the State had paid 50 million soles, equivalent to about \$15 million, in compliance with the judgement handed down by the Inter-American Court of Human Rights in the *Loayza* and *Cantoral Benavides* cases. The right to compensation could not be time-barred under the General Compensation Act of 29 July 2005, which provided that all victims of human rights violations, including torture, committee during the period 1980-2000 could claim compensation.

13. Mr. RUBIO (Peru) said that the establishment of a democratic Government had given rise to notable changes in the field of education. Under Act No. 27741 of 2002, all civilian and military institutions of education were required to teach the Constitution, human rights and international humanitarian law and the State was tasked with the elaboration of a national human rights education plan. That plan, approved in December 2005, comprised a wide-ranging extension programme on human rights and international humanitarian law. Accordingly, education programmes were developed for all levels of education. In March 2006, the Ministry of Justice, which was responsible for the plan, had concluded an educational cooperation agreement with the Inter-American Commission on Human Rights. In addition, the Judicial College organized, in collaboration with the Institute for International Studies of the Pontificia Católica University of Peru, the International Humanitarian Law Centre of the Ministry of Defence, the Institute of Legal Defence, the Institute of Human Rights and Democracy of the Pontificia Católica University of Peru and the Commission for the Study and Development of International Humanitarian Law, a number of related training activities for various occupational categories and the public at large. The army, the police, the judiciary and the Public Prosecutor's Office also provided training activities in collaboration with civil society. He highlighted the role of the International Committee of the Red Cross, which participated actively and regularly in training activities for the army and police. Lastly, at university level, four courses on human rights and international humanitarian law had been introduced at the Pontificia Católica University of Peru.

14. Mr. TUDELA (Peru), referring to the state of emergency, stressed that, in its judgement of 16 March 2004, the Constitutional Court had declared that military commands, of which the previous regime had made excessive use, were unconstitutional. Under the current regime, the civil authority was again fully responsible for public order, which was having a positive effect on the elimination of torture. There were currently two areas in Peru, located in rather scantily populated regions, where a state of emergency was in force on account of disturbances created by "narcoterrorists". As for possible remedies in that regard, under article 200, paragraph 5, of the Constitution, regulated by the Code of Constitutional Procedure, individuals could contest the state of emergency before

the courts. However, in practice so such case had yet arisen. Appeals had indeed been lodged indirectly against arbitrary detention measures but the state of emergency had never been called into question.

15. Concerning the judgements of the Inter-American Court of Human Rights, it was to be noted that, under the authoritarian regime of President Fujimori, Peru had not accepted the contentious jurisdiction of the Court, but that the new regime had again recognized the binding character of the Court's decisions; the restoration of normality had been made possible by the mobilization of civil society.

16. He then referred to the case of Lori Berenson, a United States citizen who had first been sentenced by a military court under special anti-terrorism legislation. That decision had then been quashed and the person concerned had been tried under a regular procedure and received a prison sentence for collaborating in acts of terrorism. The Inter-American Commission on Human Rights had challenged the validity of both trials. The Inter-American Court of Human Rights had declared the first trial to be unlawful but had confirmed the validity of the second. It had ordered the Peruvian State to pay compensation to Ms. Berenson for violation of her basic rights at the first trial. On account indeed of the compensatory payments ordered by the Inter-American Court of Human Rights, the heritage left by the Fujimori regime weighed heavily on the budget of the current Government. The Ministry of Justice had thus found it necessary to obtain substantial sums in order to be able to continue paying the compensation demanded by the Inter-American Court of Human Rights.

17. Mr. RODRÍGUEZ CUADROS (Peru), referring to the national human rights plan, said that, following the restoration of democracy in 2001, the Government had adopted a three-pronged policy for the protection of human rights aimed at guaranteeing free exercise of those rights for everyone, protecting victims, which included their compensation and restoration of their rights, and promoting universal exercise of economic and social rights and fundamental freedoms. Protection was ensured at three levels. At the judicial level, the Constitution offered citizens several possibilities of recourse to criminal, administrative and constitutional courts. At the quasi-judicial level, the Ombudsman was empowered to take various initiatives, and in particular to require a public employee to testify in cases of human rights violations. Lastly, non-judicial protection took the form of a policy of support for the work of non-governmental organizations and civil society, to enable them to monitor the action of the public authorities and protect citizens. Also internationally, Peru ensured the same three levels of protection. At the judicial level, the country recognized the jurisdiction of the Inter-American Court of Human Rights and had acceded to the Rome Statute of the International Criminal Court. At the quasi-judicial level, it had concluded numerous international agreements with United Nations treaty bodies and the Inter-American Commission on Human Rights. Lastly, at the non-judicial level, it applied a policy of collaboration and transparency in respect of the activities of protection carried out by international non-governmental organizations. To collaborate fully with the United Nations system, the Government had put into effect a national plan for the protection of human rights, in accordance with the guidelines of the Human Rights Commission and the Office of the High Commissioner for Human Rights. Government human rights policy had been developed in agreement with civil society, in particular with actively involved organizations. The national plan was predicated on the principle of the indivisibility of civil and political rights and economic and social rights. On the question of torture, the Constitution of Peru stipulated that the provisions of domestic law must

be interpreted in agreement with those of international human rights instruments and that, when domestic law was more restrictive, the international instrument would prevail. However, the State and civil society also wished to bring Peruvian criminal legislation into line with international law. At the national level, the State had accordingly undertaken to incorporate into its Penal Code a new definition of torture and crimes against humanity that would be fully consonant with the Rome Statute of the International Criminal Court. The Peruvian authorities considered that the work of standard-setting and rights protection was a long and demanding task and that there was always room for improvement. They attached great importance to prevention but were ready to assume their responsibility for any violation, compensate the victims and restore their rights. Lastly, where international human rights law was concerned, the main problem was not violation but impunity. The State of Peru intended therefore to prosecute all those who flouted individual rights and apply to them the penalties provided by law. Its goal, set in consultation with civil society, was to strengthen the rule of law.

18. Mr. RUBIO (Peru) said that to his knowledge Peru was the only Latin American country to have adopted a law on asylum in which it undertook not to expel, return or extradite a person to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture.

19. Mr. BURNEO-LABRÍN (Peru) noted that, in a judgement handed down on 29 March 2006 following an action for unconstitutionality lodged by the Attorney-General, the Constitutional Court had acknowledged that certain provisions of Act No. 28665 on the organization and jurisdiction of the military courts were contrary to the Constitution and had laid down the following principles: the military courts came within the competence of the judiciary and not of the executive; members of the military courts were appointed by the National Council of the Judiciary and could not be military personnel in active service; the military courts were not competent to deal with offences committed in the exercise of military functions by members of the armed forces and police; civilians were not subject to the jurisdiction of military courts; and decisions handed down by the military courts were appealable before the Supreme Court of the Republic.

20. Mr. RODRÍGUEZ CUADROS (Peru) said that Peru had undertaken a thorough reform of military justice with a view to strengthening the rule of law in the country. The military courts were in no way competent to hear cases of human rights violations and offences committed by civilians.

21. Mr. MARIÑO MENÉNDEZ, Country Rapporteur, asked whether civil prisons were still under the control of the army or whether the situation had changed following the military justice reform. He requested clarification regarding the means available to detainees to obtain legal assistance and exercise their right of defence. He also asked whether the authorities carried out medical examinations to make sure that detained persons were not ill-treated and wished to know more about the results of the Truth and Reconciliation Commission's investigations concerning enforced disappearances.

22. He referred to reports that the International Committee of the Red Cross (ICRC) was no longer able to have access to places of detention and wished for further information on that point. Lastly, he asked what were the concrete measures taken by the State Party to put an end to the practice of forced sterilization, directed mainly against indigenous women.

23. Mr. GROSSMAN, Alternate Country Rapporteur, inquired whether there were precise criteria for determining that a case should be referred to the specialized system for dealing with cases of crime and human rights violations. He also wished to know the total number of detainees and assigned counsel. He noted with satisfaction that the Truth and Reconciliation Commission had taken the view that solitary confinement was inhuman treatment and wondered whether such cases still existed. Although there had been considerable progress in establishing the rule of law in Peru, the question remained whether judges and witnesses, particularly those called before the Truth and Reconciliation Commission, continued to benefit from measures of protection. Lastly, he would also like to know more about the case of therapeutic abortion considered by the Human Rights Committee in 2005 (CCPR/C/85/D/1153/2003).

24. Ms. BELMER wished to have further information about the functions and status of the National Council of the Judiciary as the Committee had received apparently contradictory reports. It was difficult to ascertain in particular whether an appeal could be lodged against decisions handed down by the Council and whether the State exercised any control over that body.

25. Mr. TUDELA (Peru) confirmed that there was indeed a prison under military authority in Peru, namely, CEREC (Maximum-security internment centre of the Callao naval base), where serious criminals were held, including the chiefs of the Shining Path and the revolutionary movement Tupac Amaru. The existence of such an institution, which it must be stressed was an exception in the country, was warranted by the need to maintain public order and by the fact that the particular nature of the crimes attributed to the persons held there called for specific security measures which could not be provided in regular prisons. However, the National Penitentiary Institute had undertaken gradually to transfer CEREC detainees to prisons under its responsibility once the final sentence had been handed down in their trial.

26. With regard to the remedies available to detainees in cases where there was no access to legal assistance, complaints could be addressed to the prison authority and to the Office of the Attorney-General, which regularly visited prisons to collect any possible complaints and institute proceedings in the event of a violation of the right of defence. Other entities such as the Government Procurator (*Procuraduría pública*, not the Public Prosecutor) or the Human Rights Ombudsman could help to uphold the right of access to justice. It had to be recognized, however, that proportion of complaints passed on to the courts remained far below what it should have been. That was partly due to the fact that several of the complaints had first been examined by military courts without the judicial safeguards of due process. The decisions handed down having then been declared void by the Inter-American Court of Human Rights and the Constitutional Court, the complaints had then been transmitted to ordinary courts, where unfortunately they had not yet been able to be settled on account of current criminal procedure. It could however be hoped that the entry into force on 1 July 2006 of the new Code of Criminal Procedure would represent an advance in that respect.

27. The number of detainees, both convicted and unconvicted, was estimated to be 35,000, and the number of prisons, some 85. On the question of solitary confinement, no detained person was currently subjected to that practice. As for the

number of assigned counsel, there were 1,537 throughout the country, giving a mean ratio of one assigned counsel per 65 detainees.

28. Mechanisms to protect judges and prosecutors as well as persons contributing to the judicial process (*colaboradores eficaces*) were provided for by law. Although to date no case had been reported of the lives of those persons being seriously threatened, the level of protection was still inadequate. The Inter-American Commission on Human Rights had expressed concern on the subject. The Government was aware of the problem and was making every effort to solve it.

29. In response to the concern raised by Ms. Belmir, it would perhaps be useful to begin by making it clear what the National Council of the Judiciary was. It was not a judicial body. The Council was composed of a representative of the Supreme Court, a representative of the Office of the Attorney General, representatives of the Lima Bar and representatives of the Faculty of Law, a number of private universities and the National University of San Marcos. The Constitution also provided for a possibility not yet put into practice of having members of professional associations other than lawyers and members of civil society also serving in the Council. The functions of the Council were to organize the examinations to select judges and prosecutors, at all levels of the judiciary, and to make an evaluation every seven years of the professional conduct and competence of judges on the basis of an adversarial procedure, following which the Council would renew or not renew the term of office of a judge by way of a duly reasoned decision, in accordance with due process. The decisions handed down by the National Council of the Judiciary could be subject to review, but only in the event of a serious violation of the rights of defence. Under the Fujimori Government, some 150 judges had been removed from office by virtue of the evaluation procedure because they did not comply with the directives of the authorities. The Government of President Toledo was seeking to make amends for the resulting prejudice, particularly financial. Fifty-two judges had thus obtained compensation.

30. Mr. RODRÍGUEZ CUADROS (Peru), reverting to the question of the suspension of the visits of the International Committee of the Red Cross in Peru, explained that ICRC had suspended its visits on its own initiative, considering that Peru had violated the headquarters agreement it had concluded with ICRC by publishing the latter's report. Since that agreement contained no provision authorizing or expressly prohibiting such publication and that gap in the law was at the origin of the misunderstanding between the State of Peru and ICRC, the two parties had negotiated and concluded a new cooperation agreement which clearly set out their respective rights and obligations and henceforth governed all activities of the International Committee of the Red Cross in Peru.

31. Mr. RUBIO (Peru), responding to the comments on forced sterilization, said that the State had been faithful to its commitment to implement the related recommendations of the Human Rights Ombudsman, particularly with regard to the *María Mamérita Mestanza Chávez v. Peru* case, which had been referred to the Inter-American Commission on Human Rights.

32. Mr. BURNEO-LABRÍN (Peru) assured the Committee of the State party's compliance with the obligation to submit detained persons and anyone who had been subjected to an interrogation to a medical examination in order to make sure that they had not suffered torture or ill-treatment, under the direct supervision of the Office of the Public Prosecutor. Concerning the penalties applicable in cases of

enforced disappearance, it was to be borne in mind that in Peru, as in many Latin American countries, only the crime of abduction had been covered in criminal legislation until the 1990s, when enforced disappearance had been classified as a criminal offence. The Constitutional Court had decided, however, that, in so far as the effects of the enforced disappearance of persons were lasting, it should not be judged in accordance with the classification of criminal offences in force at the time when it had occurred, but in accordance with the classification currently in force. With regard to mechanisms for the protection of witnesses, the Government was currently preparing, in collaboration with human rights bodies, a legislative bill to extend the existing protection to human rights defenders and to persons who did not participate directly in the criminal proceedings. On the subject of procreative rights, the Penal Code of Peru penalized abortion, with the exception, however, of therapeutic abortion. The possibility of enlarging that exception to include termination of pregnancy in the case of an anencephalic foetus was currently the subject of intense debate, particularly in the wake of the *Karen Noelia Llantoy Huamán v. Peru* case and the decision handed down in that connection by the Human Rights Committee (CCPR/C/85/D/1153/2003).

33. The CHAIRPERSON thanked the delegation warmly for its replies and declared that the Committee against Torture had completed its consideration of the fourth periodic report of Peru.

The meeting rose at 5.05 p.m.