



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

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Summary record (partial)* of the 1096th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 30 October 2012, at 10 a.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 19 of the Convention

Sixth periodic report of Peru (CAT/C/PER/6)

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

2. **Mr. Ávila Herrera** (Peru) said that the Truth and Reconciliation Commission had registered 6,443 complaints of acts of torture and other cruel, inhuman or degrading treatment or punishment committed between 1980 and 2000. In 75 per cent of those cases, the perpetrators had been public officials or persons acting with their consent or acquiescence. As part of its transition to democracy, Peru had prosecuted and tried those primarily responsible for human rights abuses, reformed the military courts and incorporated the provisions of international law into its jurisprudence. Acts that could be considered to be inconsistent with the State's obligations under the Convention against Torture were isolated and not part of a systematic or widespread practice. The Government, concerned by those isolated cases, intended to continue cooperating with civil society and the international community, including the United Nations system, to eradicate torture, the persistence of which was all the more regrettable given that Peru applied the principles of democracy and the rule of law.

3. Paragraphs 14 and 15 of the State party's report contained information on the number of complaints of torture registered from 2003 to May 2011 and the number of cases involving members of the national police and the Armed Forces and prison staff. The Institute of Forensic Medicine kept a register of the allegations of torture made by victims or plaintiffs, on which a ruling from the competent authority had not yet been obtained. Paragraph 16 of the report provided details on the number and types of cases registered by the Institute from 2006 to 2010. The proceedings initiated and the decisions rendered by the National Criminal Court, the supra provincial criminal courts and the Supreme Court in cases of torture were summarized in paragraphs 17 to 19. In addition, statistics on the sex and age of the victims and on the institutions concerned could be found in paragraphs 21 and 22 of the report.

4. The institution most often incriminated in the convictions handed down by the National Criminal Court in cases of torture was the national police. The Inspectorate-General of the National Police was responsible for disciplinary investigations and could order preventive or punitive measures. According to figures provided by the Ministry of the Interior, 24 members of the national police had been forcibly retired for violating the law governing the national police disciplinary regime. Military personnel could not be tried in military or police courts for crimes against humanity, including the crime of torture. The ordinary courts therefore held jurisdiction over such cases.

5. The offence of torture had been introduced in the Criminal Code under the heading "crimes against humanity" and carried penalties ranging from 5 to 20 years' imprisonment. So far, there had been 17 convictions and 18 acquittals in cases of torture, so there could be no question of impunity. Paragraphs 59 to 63 of the report listed the relevant constitutional and legislative provisions pertaining to the State party's fulfilment of its human rights obligations during states of emergency. The same paragraphs also provided details about the case law of the Constitutional Court on the use of force.

6. **Ms. Sveaass** (Country Rapporteur) said that the effects of the period from 1980 to 2000 on Peruvian society were still perceptible. Two serious problems that had been highlighted by the Committee in its previous recommendations were still issues of priority, namely the high number of complaints of torture against officials of the police, the Armed

Forces and the prison system and the continued and frequent proclamation of states of emergency, which was accompanied by human rights violations. In that context, she asked the delegation to comment further on the figures provided on allegations of torture and complaints registered by the military, police and prison authorities and on cases registered by the Institute of Forensic Medicine, as well as on the decisions rendered by the judicial authorities. She requested in particular details about the nature and circumstances of the acts committed and about the follow-up given to the complaints, for which there was no central register. The low number of convictions also required an explanation. She also asked the delegation to clarify whether the Institute of Forensic Medicine had the authority to conduct psychological evaluations and thorough investigations in cases of torture, and whether there were any plans to decentralize some of its services so as to make them available throughout the country. The delegation should also specify to what extent the protocol on the investigation of torture and other cruel, inhuman or degrading treatment or punishment, which was based on the Istanbul Protocol, was used to evaluate alleged victims of torture.

7. The number of acts of torture attributed to military personnel was worrying. She took note of the fact that acts of torture committed by military personnel were prosecuted in ordinary courts but wished to know what happened when the victims of those acts were also military personnel, and whether those responsible for such acts were subject to custodial sentences and administrative sanctions. Generally speaking, the number of persons, particularly military personnel, who had been pardoned or acquitted by the special courts responsible for prosecuting human rights violations committed during the armed conflict was high. In some cases, the accused had been acquitted even when the acts of which they had been accused seemed hard to deny. It had been suggested that the situation might be explained by a lack of cooperation on the part of the military authorities, on which the delegation might like to comment. The delegation should also provide updated information on the number of proceedings initiated and on the decisions rendered, as well as on the psychological and financial support provided to victims, including support enabling them to testify.

8. She welcomed the Comprehensive Reparations Plan, which had made it possible to take a wide range of measures to support victims of acts of torture committed during the conflict. However, a serious shortcoming of the plan was that it did not provide sufficient reparations measures focusing on mental health, especially psychological recovery measures. She asked the delegation to clarify whether there were plans to strengthen the mental health services offered as part of reparations. It also seemed that there was a long delay between the moment a person was added to the Central Register of Victims and the moment they received the corresponding certificate, and that the register would be closed in December 2012 even though many persons had not yet been registered. She therefore wished to know whether there were any plans to delay the closure of the register. She also requested further details about the measures taken to benefit persons who had been victims of acts of torture committed after the end of the conflict, and she asked whether there were plans to create a central register of complaints of torture.

9. She asked whether, under Peruvian law, the definition of torture also included suffering inflicted for a reason based on discrimination of any kind, and whether acts of torture were subject to a statute of limitations. She also wished to know on which norm the Supreme Court had based its decision to overturn the court determination that the Barrios Altos massacre and the forced disappearances of Pedro Yauri and a group of peasants in Santa Province constituted crimes against humanity. Noting also the high levels of violence against women in the State party, and the fact that the perpetrators of such acts enjoyed impunity, she asked for information about the measures planned to criminalize and punish violence against women, particularly sexual violence. She also asked if, in practice, a judge could establish that rape or sexual violence was a form of torture, and she wished to know

the status of the review of the bill incorporating the Rome Statute into national legislation, which classified rape as a crime against humanity if committed in the context of a widespread or systematic attack. With regard to refugees, she asked the delegation to provide information on the mechanisms in place to guarantee in practice the right of persons entering the country to seek asylum.

10. States of emergency had been declared on 63 occasions in the last 15 months. The delegation should explain how the authorities ensured that human rights were respected in such circumstances. In addition, there were many examples of excessive use of force against civilians during political and social protests, particularly those related to environmental protection. For example, the Grupo de Formación e Intervención para el Desarrollo Sostenible (GRUFIDES), which opposed certain mining projects, had been the target of many acts of repression, as had its lawyers. The delegation should indicate the steps being taken to limit and monitor the use of force by security forces. Lastly, she asked the delegation to comment on the information that lesbian, gay, bisexual and transgender (LGBT) persons were victims of harassment and sometimes hate crimes.

11. **Mr. Wang** Xuexian (Country Rapporteur) noted that, according to information before the Committee, about 60 per cent of detainees in the State party were awaiting trial, and he asked the delegation to comment on that information. The State party had indicated that 90 per cent of its judges had been tenured and had stable employment. What about the remaining 10 per cent? According to the Instituto de Defensa Legal, in December 2010 the National Criminal Court had handed down only 20 decisions on offences committed during the armed conflict, 85 per cent were acquittals. The delegation might wish to comment on that and indicate the steps taken to ensure the cooperation of the military authorities in the investigations and prosecutions. In addition, in March 2001, the Inter-American Court of Human Rights had ruled that the Peruvian amnesty law was incompatible with the American Convention on Human Rights. That judgement had led to the reopening of several cases, and the Committee wished to know their outcome. In addition, according to information before the Committee, 3,000 cases of enforced disappearance had been identified. It would be interesting to know whether those cases had been investigated and whether any steps had been taken to address the problem.

12. Three specific examples illustrated the tendency of law enforcement officials to use excessive force. In 2011 in Islay Province, 3 persons had been killed and 13 injured in an incident involving law enforcement officials. In 2012, in Celendín Province, police officers had killed 4 civilians and injured 16 others as they dispersed a crowd protesting against a mining project. Lastly, in April 2011, a 26-year-old man named Gerson Falla had been beaten by police and had died 48 hours later. The delegation should indicate whether those cases had been investigated and whether the Government had taken measures to monitor the use of force and to ensure that law enforcement officials received appropriate training. With regard to violence against women, he asked if the Government authorities were aware of the extent of the problem of forced abortions and backstreet abortions in the country and whether they planned to take steps to allow women to have abortions legally. Lastly, there was information indicating that in some remote regions of the country indigenous persons were reduced to slavery or subjected to debt bondage or serfdom. The delegation might wish to indicate what was being done to remedy that situation.

13. **Mr. Bruni** said that Peru had become a party to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2006 and that its national preventive mechanism should have been established by September 2007, but that had not been done. A bill on the subject was currently being considered by parliament. Could the delegation indicate whether a deadline had been set for the establishment of the mechanism and what financial resources it would have at its disposal? With regard to conditions of detention, he noted that the occupancy

rate of detention facilities was currently 180 per cent and that there were not nearly enough doctors working in those facilities. He asked what measures had been taken to remedy that situation. Conditions in the Challapalca and Yanamayo facilities, located at an altitude of 4,000 and 4,600 metres respectively, were particularly harsh. The Challapalca prison, for example, was not heated. The Government authorities had already told the Committee that placement in those institutions was used as a means of punishment. The Committee wished to know whether that was still the case and whether there were any plans to close those prisons. In addition, the Peruvian Sentences Enforcement Code stipulated that a prisoner could be placed in solitary confinement for 30 days for a serious violation of correctional rules, and that the measure could be extended to 45 days if the person committed a further violation of the rules while in solitary confinement. The delegation might wish to comment on that practice of prolonged isolation, as the Special Rapporteur on the question of torture had indicated in a study that it constituted a form of ill-treatment and even torture. The delegation might also indicate whether the particularly rigorous conditions of detention in the high security prison in Callao, reserved for dangerous prisoners, had changed since the Committee members' visit in 1998, in implementation of the Committee's recommendations.

14. **Mr. Domah** asked if the State party had sought to understand why the cases of torture that had been shelved outnumbered those that had resulted in convictions, and whether that reflected flaws in the investigation or a lack of training among the members of the judiciary who handled cases of torture. He would appreciate further information on the case law concerning the interpretation of torture and wished to know whether the most socially vulnerable groups, such as children, women and LGBT persons, were subjected more often to acts of torture, and whether there was any law stipulating the liability of corporations that subjected their employees to working conditions similar to torture, as could be the case with mining companies.

15. **Mr. Mariño Menéndez** asked if an alleged victim of an act of torture or one of the victim's family members could request that the Istanbul Protocol be used to investigate the facts of the case, and what practice was followed in that regard. He wished to know whether, in cases of extradition, the Peruvian authorities asked the requesting State for diplomatic assurances before deciding to return a foreigner to a country where they risked being subjected to torture. Given that torture itself constituted an offence that was separate from crimes against humanity, which were dealt with by ordinary courts, he asked if acts of torture that did not fall within the category of crimes against humanity were ever brought before the military courts, even if the alleged victims were civilians. Lastly, he requested further details about the legislation on violence against women, and in particular on the bill to combat femicide.

16. **Mr. Tugushi** said that he wished to know what follow-up had been given to the numerous complaints against prison guards, police officers, military personnel and other security officers, who had killed civilians in 2009 and 2011 by means of excessive and unwarranted use of force. He asked whether the State party intended to allocate the necessary funds to deal with prison overcrowding and alleviate the shortage of doctors in prisons, and whether it planned to build new prisons and encourage non-custodial sentences. The delegation might also indicate whether the State party intended to establish an independent mechanism to identify cases of violence and ill-treatment in all places of detention and psychiatric hospitals and to monitor whether the staff there were using restraint measures, including chemical measures. Lastly, it would be useful to know if the State party intended to close the facilities reserved exclusively for persons with disabilities, so as to encourage their integration into society and prevent violations of their fundamental rights, which occurred frequently in that type of establishment.

17. **Ms. Belmir** noted that the State party frequently declared states of emergency, which concentrated all power in the hands of military courts and therefore compromised the respect for fundamental guarantees offered by the ordinary courts. Thus, witnesses and victims' family members were sometimes too frightened to attend trials, children were sometimes brought before a military court, and suspects could be detained for up to two weeks before being brought before a court. Added to that was the widespread corruption and the fact that judges were sometimes appointed for life and that the Peruvian Government played a key role in their appointment, all of which led to the conclusion that, contrary to what the State party suggested, it was not doing everything it could to combat torture.

18. **Ms. Gaer** noted that the State party had not provided within one year the information the Committee had requested in the concluding observations it had issued following its consideration of the fourth periodic report of Peru (CAT/C/PER/CO/4), and she urged the State party to fulfil that obligation in the future. She wished to know what follow-up had been given to the 2,368 cases of enforced disappearance that were still pending out of the 3,006 communicated to the Government by the Working Group on Enforced or Involuntary Disappearances, and whether the army was involved in dealing with those cases. She wished to know: the status of the bill criminalizing rape and femicide; why half of rape cases were shelved or resulted in an acquittal; and why, when there was a conviction, the penalties were not enforced. Lastly, the delegation might wish to indicate whether the State party planned to decriminalize abortion and to identify cases of torture and other offences specifically affecting members of the LGBT community.

19. **Mr. Ávila Herrera** (Peru) said that his Government was currently considering the possibility of establishing a register of all complaints of torture reported throughout the country. It also intended to adopt a national plan for the search for missing persons, and the Ministry of Justice had already allocated US\$ 350,000 to establish a system for identifying human remains through DNA testing. It was certainly true that in the past reparations for victims of torture had been woefully inadequate, but things were changing and both victims and witnesses now enjoyed increased protection that was intended to keep them safe from reprisals, which should encourage the victims to file complaints and the witnesses to testify.

The discussion covered in the summary record ended at 12.05 p.m.