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ADMINISTRATION OF JUSTICE, RULE OF LAW AND DEMOCRACY

**Written statement* submitted by the Minnesota Advocates for Human Rights, a non-
governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[2 July 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

The Peruvian Truth and Reconciliation Commission Process

1. Between 1980 and 2000, Peru experienced violent internal conflict that resulted in the death and disappearance of an estimated 69,280 persons and the internal displacement of as many as 600,000 persons. Thousands more were detained, tortured and denied a fair trial. The Sendero Luminoso and Tupac Amaru Revolutionary Movement (MRTA) armed insurgent groups, as well as the Peruvian government, were directly responsible for serious and widespread human rights abuses during this period of political violence, which ended in 2000 when President Alberto Fujimori fled the country.
2. Now Peru faces both a tremendous challenge and an historical opportunity for national reconciliation. To this end, a Truth and Reconciliation Commission (Commission) was created by presidential decree in 2001 to investigate, clarify and assign responsibility for human rights violations committed between 1980 and 2000. The Commission completed its work and submitted its final report to the Peruvian government on August 28, 2003.
3. In November 2002, a delegation of 10 attorneys from Minnesota Advocates traveled to Peru to participate as international observers in the Commission process. The team conducted fact-finding, including individual interviews with victims, witnesses, legal advocates, human rights organizations and mental health professionals, Commissioners, Commission staff members, judges (both sitting and former), prosecutors, and police. The team visited Castro Castro and Chorrillos prisons and a torture treatment center. Two team members also went on to observe the Commission-sponsored exhumation of mass gravesites in Lucanamarca and Huancasancos.
4. Minnesota Advocates submitted a preliminary report and recommendations to the Commission in May of 2003. Minnesota Advocates sent a second delegation to Peru in August 2004 to monitor the government's actions in implementing the Commission's recommendations. This written statement to the Sub-Commission briefly summarizes some of our findings and recommendations that are pertinent to the administration of justice generally and to the work of other Truth and Reconciliation Commissions.
5. In general, Minnesota Advocates found that the Commission worked diligently to address its mandate. We applaud the work of the Commission and the Peruvian government's commitment to accept its recommendations as binding. Further, we commend the active participation of sectors of the Peruvian civil society, especially organizations composed of victims, who have taken on the task of justice, truth and reconciliation.
6. The Commission amassed an extraordinary amount of information during its operation. Its Final Report shows that the Commission conducted numerous public hearings and workshops, collected 16,885 testimonies, analyzed human rights violations, initiated a campaign on disappeared persons and advanced significantly towards understanding the causes of the violence and formulating ideas for reparations and institutional reforms.
7. The success of the Peruvian Commission can be partly attributed to the fact that civil society organizations are playing an unprecedented role in supporting the work of the Commission.

8. It has been well documented that during the years under investigation by the Commission the use of torture and cruel, inhuman and degrading punishment was both systematic and widespread. Minnesota Advocates heard from many interviewees about their direct experiences with torture. Both current and former public officials stated that the practice of torture was one of the primary stumbling blocks to a fundamentally fair legal and judicial system in Peru.

9. At least two elements of the Peruvian criminal justice system acted as an open invitation for authorities to practice torture routinely throughout the 20 years of political violence in Peru: (i) the extensive use of incommunicado detention without judicial oversight or access to legal counsel, particularly in cases involving terrorism or treason charges; and (ii) the judiciary's acceptance of forced confessions as admissible evidence.

10. The anti-terrorism laws passed by executive decree in 1992 fostered this abuse because the laws allowed police to detain a suspect -- unilaterally and without an arrest warrant, -- to hold the suspect incommunicado for up to 10 days, or for up to 15 days in cases of terrorism-related treason, all without a judge's authorization.¹ Further, the practice persisted because a climate of impunity existed in Peru. Victims were often harassed and intimidated into dropping charges, and the accused were not suspended from duty pending the investigation and sometimes were even transferred or promoted to a higher rank.²

11. Minnesota Advocates reaffirms the importance of the Commission's final report and recommendations, particularly those related to reparations for victims and the search for justice. We applaud the creation of a High Level Multisectoral Commission in March 2004 to oversee the implementation of the Truth and Reconciliation Commission's recommendations. Minnesota Advocates strongly recommends that the Peruvian government take immediate action to ensure that the Multisectoral Commission functions expeditiously and effectively to implement recommendations, particularly as they relate to reparations, institutional reform, and the creation of a National Registry of Victims and a National Plan for Exhumations. Minnesota Advocates recommends that the Multisectoral Commission be given the necessary resources to facilitate the full realization of its objectives, goals and activities.

12. Minnesota Advocates also calls upon the government of Peru to prosecute effectively the crimes specifically identified by the Truth and Reconciliation Commission. To date, only a small proportion of the cases investigated by the Commission have been forwarded to the Attorney General's office for prosecution. The government must ensure that: 1) judges, prosecutors, witnesses and victims are adequately protected; 2) the judicial selection process is rigorous and that only those candidates who demonstrate appropriate training, aptitude, honesty, impartiality and concern for human rights are selected as judges; and 3) the judiciary receives direct funding rather than its budget being included in the executive branch appropriations.

13. Minnesota Advocates recommends that, with regard to the 4,644 mass graves identified in Peru, a special independent investigatory body be appointed to conduct exhumations in cases where the government is implicated in the death under investigation and cannot conduct an

¹ Amnesty International, *Peru: Torture and ill-treatment – Time to put words into practice* 5 (June 2002).

² *Id.* at 13-14.

objective and impartial investigation. Immediately upon identification of a mass grave, access to the site should be restricted to authorized persons only, and a guard should be posted 24 hours per day to protect potential evidence from being tampered with or destroyed.

14. Local prosecutors and police involved in the investigation and prosecution of extrajudicial, arbitrary or summary executions should be provided specialized training in forensic evidentiary analysis, autopsies, evidentiary burdens of proof and international standards governing the protocol for exhuming and analyzing skeletal remains.³

15. Family members should be accompanied and counseled by mental health professionals throughout all aspects of the exhumation process, and family members' religious needs should be taken into account. Family members should also be provided with a detailed explanation of what will occur during the forensic analysis and the likelihood that individual remains will be returned to family members for burial.

16. Regarding the outstanding arrest warrants for people known as “requisitoriados,” which Judges often issued indiscriminately for persons suspected of collaborating with armed dissident groups, Minnesota Advocates recommends that the warrants be changed to “notices to appear.” We propose that requisitoriados be released on their own recognizance or released on bond pending investigation of the charges in the warrant. Further, we recommend that the Peruvian government implement the following procedures consistent with international standards: all outstanding arrest warrants be reviewed by an independent and impartial body, a national police database should accurately reflect the status of all warrants, and any warrant that is not acted upon within six months should expire.

17. Minnesota Advocates also recommends the following regarding pardons for “inocentes”: The Ministry of Justice pardons commission set up to review convictions under the anti-terrorism laws and recommend presidential pardons for persons who were convicted based on insufficient evidence is grossly underfunded and understaffed, making it difficult to evaluate the large volume of cases, particularly those from the provinces. Not only is the review process slow, it is also subject to political will. After the pardons commission recommends a pardon, both the Minister of Justice and the President must sign the pardon. In addition, individuals who receive a pardon are not declared innocent and do not have their convictions overturned.

18. When considering the cases of individuals claiming innocence of convictions under the anti-terrorism laws, Minnesota Advocates urges the Peruvian government to follow international standards governing the treatment of persons who have been unfairly convicted and imprisoned. In particular, persons who are pardoned should have their convictions overturned and expunged from official records. Persons who are pardoned after it is determined that they were convicted because of a miscarriage of justice must be compensated.⁴

³ See United Nations, *Manual on the Effective Prevention of Extra-Legal, Arbitrary or Summary Executions* at Part III(D)(1) (Model Protocol for the Investigation of Extra-Legal, Arbitrary or Summary Executions); see also Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions at para. 11.

⁴ American Convention on Human Rights at Art. 10; International Covenant on Civil and Political Rights at Art. 14(6).

19. Additional funding for staff and resources should be provided to the pardons commission so that they may increase the pace of its work. The President of Peru should review and make a decision regarding all outstanding recommendations from the pardons commission immediately. The pardons commission should be given the authority to recommend a reduction in sentences that are disproportionate to the gravity of the crimes committed.

20. To assure the protection of human rights in Peru, we call upon the government of Peru to make every effort to implement the following recommendations for institutional reform.

21. In 2003, a Special Supreme Court commission determined that 163 provisional and substitute (suplente) judges did not meet adequate judicial standards. The dismissal of these judges, most of whom were appointed by President Fujimori is a positive step towards needed judicial reform. Minnesota Advocates calls upon the special commission to continue to evaluate the remaining 228 provisional judges. In addition, we call upon the government of Peru to ensure that the judicial selection process is rigorous and that only those candidates who demonstrate appropriate training, aptitude, honesty, impartiality and concern for human rights shall be selected.

22. All detainees and prisoners must be kept in officially recognized centers, strict records must be kept on their whereabouts and regular, unrestricted access to these facilities must be granted to family, legal counsel and non-governmental organizations so that the status and condition of detainees and prisoners may be monitored. Legal mechanisms should be put in place for individuals or groups to seek effective judicial protection from extrajudicial execution, particularly for those people receiving death threats.

23. To ensure that law enforcement officers do not use excessive force that could result in arbitrary execution, every law enforcement agency must have regulations in place that strictly limit the use of force and firearms to exceptional circumstances where no other means are effective or their use is necessary to protect the safety and life of the law enforcement officer. If the use of force or firearms is necessary, law enforcement officers must exercise restraint, minimize damage and injury, ensure that immediate medical assistance is provided to injured persons and notify relatives promptly.⁵

24. If a death occurs while in law enforcement custody, a qualified and impartial physician or forensic pathologist must conduct an autopsy and have access to all investigative data. Policies and procedures must be in place to conduct thorough, prompt and impartial investigations to determine the time of death and whether the death was from natural or accidental causes, a suicide or a homicide.⁶

25. In conclusion, while we applaud the Peruvian government for creating a High Level Multisectoral Commission and adopting new legislation on internally displaced persons, Minnesota Advocates strongly urges all branches of the Peruvian government to take further steps to ensure that the important work of truth and reconciliation is carried on now that the Truth and Reconciliation Commission's mandate has ended.

⁵ Basic principles on the Use of Force and Firearms by Law Enforcement Officials at para. 5.

⁶ Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions at para. 9.

26. Further, we urge all sectors of Peruvian society, including political parties and civil society organizations, as well as the international community to support the current efforts to continue the important work begun by the Commission.

27. Minnesota Advocates will release a public report of its findings and recommendations concerning the Peruvian Truth and Reconciliation Commission in the fall of 2005. Full text of the report will be available on our website: www.mnadvocates.org.

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