

PERU

United Nations Human Rights Committee's recommendations must be implemented

The attached document includes a summary of Amnesty International's concerns about the human rights situation in Peru submitted by the organization to the United Nations Human Rights Committee in July 2000 (AI Index: AMR 46/23/00), in view of the Committee's examination in October 2000 of Peru's fourth periodic report on the measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR).

On 24 October 2000, the Committee examined Peru's fourth periodic report. The attached external document incorporates the concluding observations and recommendations made by the UN Human Rights Committee to the Peruvian Government on this occasion¹ which were approved by the UN Human Rights Committee during their 1892nd meeting which took place on 1 November 2000.

Prior to the UN Human Rights Committee reviewing the report, President Alberto Fujimori called for new elections amidst allegations of fraud, and announced that he would not stand as a candidate. In addition, since the Committee published its recommendations on 3 November 2000, there have been more changes in Peru's political scenario. The Peruvian Congress declared Alberto Fujimori "morally unfit" *for office after he took refuge in Japan in mid-November 2000. On 22 November, Valentín Paniagua was sworn in as the new president of Peru. He will be in power until 28 July 2001 when the candidate that wins next year's presidential elections (scheduled for 8 April 2001) becomes president. President Valentín Paniagua appointed a new government shortly after his election.*

In its observations to Peru's fourth periodic report, the UN Human Rights Committee welcomes the announcement that presidential elections in the country will be moved forward to 2001, as well as the abolition of the emergency zones just before the last presidential elections in April 2000.

The Committee also notes, as other positive developments, the introduction on 21 February 1998 of the crime of torture in Peru's Criminal Code -Law 26926-, and the implementation of its recommendation to end the trials by "jueces sin rostro" (faceless judges)² for terrorism-related offences.

¹ UN Doc. CCPR/CO/70/PER, 3 November 2000

² The use of faceless judges for terrorism-related offences was abolished in October 1997.

However, the UN Human Rights Committee regrets that the Peruvian Government had not yet implemented the recommendation to annul the 1995 amnesty laws and urges the Peruvian authorities, once more, to do so promptly. Moreover, the Committee expresses concern at reports that Peru's former Government tried to push through a new amnesty law as a condition to the call for new presidential elections in the country. The Committee urges the Peruvian Government to refrain from passing any other amnesty laws in the future.

On the independence of the judiciary, the UN Human Rights Committee outlines three main concerns: in its report, the Committee regrets the existence of an Executive Commission of the Judicial System which jeopardises the independence of the judiciary, and the high number of temporary judges -over 60% according to reports-. In addition, the Committee expresses concern about the dismissal of three judges of the *Tribunal Constitucional* (Constitutional Court) in 1997. The Committee urges the Peruvian government to reinstate the three magistrates and to take measures to guarantee the independence of the judicial system, in particular by normalising the situation of the temporary judges to guarantee stability in their functions.

In addition, the Committee expresses concern about the increase in the number of complaints of harassment and threats against journalists and urges the Peruvian Government to investigate these allegations and to cease any measures that may limit directly or indirectly the right to freedom of expression in the country.

The UN Human Rights Committee also presents in its report some concerns and recommendations on the issue of the "innocent prisoners" in Peru who are those persons who have been falsely charged or/and convicted of terrorism-related offences. Whereas the Committee welcomes the pardoning of many "innocent prisoners", it also reminds the Peruvian Government that a presidential pardon does not offer full compensation to those persons who have had an unfair trial. In addition, the Committee urges the authorities to release immediately and unconditionally all those prisoners who have been falsely charged or/and convicted of terrorism-related offences.

On the subject of unfair trials, the Committee also recommends the authorities to implement mechanisms to review the cases of civilians tried in military courts. The Committee condemns that civilians continue to be tried in military courts and states that this practice does not guarantee a fair, impartial and independent justice.

Since the UN Human Rights Committee issued its recommendations, the Peruvian authorities have already implemented some of them. For instance, on 4 November 2000, the Peruvian Congress deactivated the Executive Commission of the Judicial System and the Executive Commission of the Public Ministry -Law no. 27367-. All the functions and powers of these two commissions have now been transferred to the *Consejo Transitorio del Poder Judicial* (Transitional Council of the Judicial Power). The Transitional Council will be in charge, among other things, of reviewing the situation of the temporary magistrates. The Peruvian Congress has also annulled the regulations that gave the same competences and rights to permanent and provisional judges.

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On 17 November 2000, the Peruvian Congress voted in favour of the restitution of the three magistrates of the *Tribunal Constitucional* (Constitutional Tribunal) who were dismissed in 1997. In addition, on 3 December 2000, 11 "innocent prisoners" were pardoned and released.

President Valentín Paniagua's transitional government appears so far to be genuinely committed to the reestablishment of the rule of law in the country. Amnesty International welcomes the steps taken by the Peruvian authorities in the past few weeks which are positive steps towards restoring the rule of law in the country and will benefit the promotion and protection of human rights in the country.

The organization urges the Peruvian authorities to implement all the recommendations of the UN Human Rights Committee and ensure that Peru abides by international human rights law and starts the new millennium protecting and promoting human rights.

PERU

A summary of concerns: A Briefing for the United Nations Human Rights Committee

1. Introduction

Amnesty International submits the following summary of its concerns about the human rights situation in Peru for the consideration of the United Nations Human Rights Committee in view of its examination, in October 2000, of Peru's forth periodic report on the measures taken to implement the provisions of the International Covenant on Civil and Political Rights (ICCPR).

This report summarizes Amnesty International's concern that Peru has failed to fully implement Articles 2, 7, 9, 10, 14, and 19 of the Covenant.³ Amnesty International regrets that Peru has failed to implement the recommendations made by the Human Rights Committee in 1996. In 1996, when it reviewed Peru's third periodic report, the Committee expressed concern about Peru's failure to meet its obligations under the above mentioned articles of the Covenant.

2. Article 2: Guaranteeing Remedies

Article 2(3) of the ICCPR provides that each State party undertakes to ensure the provision of an effective remedy for people whose rights have been violated.

Peru's track record of providing effective remedy for violations of human rights is poor. The government has still failed to take measures to implement the Human Rights Committee's recommendations to repeal the amnesty law which was enacted by Peru's Congress in 1995 and granted a general amnesty to all those members of the security forces and civilians who were the subject of a complaint, investigation, indictment, trial or conviction, or who were serving prison sentences, for human rights violations committed between May 1980 and June 1995.⁴

³ Amnesty International works on specific human rights violations and therefore has no information on whether Peru is complying with the other articles in the Covenant.

⁴ Preliminary Observations of the Human Rights Committee, CCPR/C/79/Add.67, para. 20, 25 July 1996, and Concluding Observations of the Human Rights Committee, CCPR/C/79/Add.71, paras. 9 and 19, 18 November 1996.

At least 5,000 people "disappeared" or were extrajudicially executed during these years. The amnesty law denies the relatives of the vast majority of these victims the right to effective remedy under the ICCPR.

3. Articles 7 and 10: Prohibition of torture and humane treatment of detainees and prisoners

Amnesty International is concerned that Peru is not fully implementing Articles 7 and 10 of the ICCPR, which prohibit torture and other cruel, inhuman or degrading treatment or punishment and impose an obligation on the government to ensure that all people deprived of their liberty are treated with humanity and respect for the inherent dignity of the human person. This concern is based on continued reports of allegations of torture and ill-treatment by the security forces, on laws which create conditions which facilitate torture and ill-treatment following arrest and during the preliminary interrogations, and on the lack of commitment by the authorities to end impunity.

Amnesty International continues to receive reports that persons detained by the Peruvian armed forces and the police are being tortured and ill-treated when they are arrested for common crimes or crimes of "terrorism".⁵ These reports suggest that the security forces either torture detainees to extract information and confessions or to punish them.

Amnesty International believes that the 1992 anti-terrorism legislation to combat armed opposition groups undermines safeguards designed to prevent torture and ill-treatment.⁶

⁵ See Appendix in Amnesty International report, *Peru: Legislation is not enough. Torture must be abolished in practice*, AI Index: AMR 46/17/99, September 1999, which includes cases of torture and ill-treatment documented by Amnesty International.

⁶ In addition between May 1998 and December 1999 a law against "aggravated terrorism" was in effect which also undermined safeguards designed to prevent torture and ill-treatment. See *Peru: Legislation is not enough. Torture must be abolished in practice*, AMR 46/17/99, September 1999, for an explanation of this legislation. Since December 1999, those charged with "aggravated terrorism" are no longer tried under the military justice system.

The 1992 anti-terrorism legislation grants extensive powers to the police during the investigation phase. The police have the power to detain a suspect without a warrant. The police are also in charge of the pre-trial investigation. This "*detención preventiva policial*", preventative police detention, as the Government of Peru has called it⁷, can be extended for up to 15 days, and for the terrorism-related crime of treason the period can be extended for a further 15 days. During this period the detainee is under exclusive control of the police who, depending on the "circumstances and complexity of the investigation" may request that the detainee is held "incomunicado" for up to 10 days⁸.

Amnesty International considers that 15 days in police custody and the possibility of holding a person in custody for 10 days "incomunicado" facilitates torture and ill-treatment.

Filing a writ of *habeas corpus*, the procedure through which a person may challenge the legality of his/her detention, is possible since November 1993 under the anti-terrorism legislation. However, its effectiveness has been seriously undermined. When the detainee is charged with the "crime of treason" writs of *habeas corpus* can only be filed before a military judge. The Human Rights Committee expressed concern at the use of military tribunals to try civilians in 1996 when it reviewed Peru's third periodic report.⁹ Amnesty International considers that military courts are neither independent nor impartial in Peru and therefore should not try civilians.

In addition, the effectiveness of the writ of *habeas corpus* is also undermined under a system which allows for incomunicado detention and under which the police appoint legal aid defence lawyers.

⁷ UN doc, CAT/C/20/Add.6, para. 6

⁸ Incomunicado detention may be ordered without the authorization of a judge under the 1992 anti-terrorism legislation. Until April 1995 it allowed for the "*incomunicación absoluta*", "total incomunicado detention", of the detainee.

⁹ Preliminary Observations of the Human Rights Committee, CCPR/C/79/Add.67, para 12, 25 July 1996

For those detained on suspicion of having committed a common crime, the Peruvian Constitution, which came into effect in December 1993, states under article 2. 24f that "[t]he detainee should be brought before the appropriate court, within twenty-four hours or within a reasonable period for those detained in a place far from a court."¹⁰ Amnesty International considers detainees should be presented without delay before a civil judge or representative of the Public Ministry who should have the right and duty to supervise effectively the detention of prisoners. However, the organization is concerned that either the security forces are not bringing detainees before the "appropriate court" promptly or that the judicial authorities are not exercising their duty to supervise effectively the detention of prisoners. Thus, although in theory the Peruvian Constitution provides this safeguard for detainees held on suspicion of common crimes, in practice those detainees continue to be tortured.¹¹ In addition, Amnesty International is concerned that the Peruvian *Código Procesal Penal*, Code of Penal Procedures, also allows for up to 10 days' incommunicado detention for those detained on suspicion of having committed a common crime, which, is an excessively prolonged period, and may lead to detainees being subjected to torture or ill-treatment.

In addition to possible torture and ill-treatment during the interrogation phase, Amnesty International is concerned that the penitentiary regime for prisoners convicted of terrorism-related offences, is tantamount to cruel, inhuman and degrading treatment. Amnesty International notes that until June 1999 those convicted of crimes of terrorism and treason under the 1992 anti-terrorism legislation were to remain locked in their cells continuously and isolated from other prisoners during the first year of their prison sentence¹², contravening the Human Rights Committee General Comment 20 which specifies that "prolonged solitary confinement of the detained or imprisoned person may amount to acts prohibited by article 7."¹³ Since June 1999 people convicted of these

¹⁰ (Translation by Amnesty International) Article 2.24F of the Peruvian Constitution reads: "[e]l detenido debe ser puesto a disposicion del juzgado correspondiente, dentro de las veinticuatro horas o en el término de la distancia"

¹¹ See cases 3 and 5 in the Appendix of Amnesty International's report: *Peru- Legislation is not enough. Torture must be abolished in practice*, AMR 46/17/99, September 1999.

¹² Until June 1999, Article 20 of anti-terrorism Decree Law 25,475 read : "Under this Decree Law, during the first year of detention or imprisonment punishment will be compulsorily served in a maximum security prison in solitary confinement" (translation by Amnesty International) "*Las penas privativas de libertad establecidas en el presente Decreto Ley se cumplirán, obligatoriamente, en un centro de reclusión de máxima seguridad, con aislamiento celular continuo durante el primer año de su detención.*"

¹³ UN Human Rights Committee, General Comment 20 on Article 7 of the ICCPR, para. 6, 10 April 1992.

crimes are allowed one hour per day in the prison yard during their first year of imprisonment.

Amnesty International believes that other aspects of the prison regime for those convicted of crimes of terrorism violate the right of persons deprived of their liberty to be treated with humanity and respect in contravention of Article 10 of the ICCPR, and may amount to cruel, inhuman and degrading treatment in contravention of Article 7 of the Covenant.

In 1997 revised guidelines for the treatment of prisoners charged and/or convicted of crimes of terrorism were approved by Supreme Decree No. 005 - 97 -JUS. The regulations came into force in August 1997 and were designed to ease the harsh conditions faced by prisoners accused of terrorism. However, Amnesty International is concerned about the way prisoners are evaluated under this new decree in order to be eligible to receive benefits. The organization visited the *Establecimiento Penal de Máxima Seguridad de Mujeres, Chorrillos*, High Security Prison for Women, Chorrillos, in Lima, the capital, in September 1998 and noted that according to the director's interpretation of "good behaviour" all those prisoners who continue to hold their political beliefs would not enjoy the better conditions stipulated under the new decree. The benefits include a longer exercise period in the prison yard, as well as extended visiting times and physical contact with relatives during visiting times. Amnesty International continues to be seriously concerned that since 1992 those prisoners who have not renounced their political beliefs receive visitors in conditions that are cruel and inhuman. For example, in April 1998 the Amnesty International delegation was able to see that during visiting time women prisoners at the *Establecimiento Penal de Máxima Seguridad de Mujeres, Chorrillos*, are hardly able to talk to their visitors through the closely-meshed metal barrier that separates them.

In addition, the new regulations explicitly excluded prisoners held in military prisons. The prison in the Callao Naval Base, near Lima, holds leaders of the armed opposition groups *Movimiento Revolucionario Túpac Amaru*, Túpac Amaru Revolutionary Movement, and *Partido Comunista del Peru, Sendero Luminoso*, Communist Party of Peru, Shining Path, in underground cells. These prisoners have been held under these conditions since 1992.

Amnesty International also considers that the high security prison of Challapalca in the Andean highlands, which was built in 1997 for common criminals, holds prisoners in cruel, inhuman and degrading conditions. The prison is in excess of 4,500 metres above sea level where, according to medical opinion, holding people for prolonged periods of time could lead to serious illness or even death. In addition, it is difficult to access the prison and thus prisoners' access to relatives and lawyers is seriously curtailed.

Amnesty International is also concerned at the continued lack of political will to end impunity in cases of torture. In February 1998 the Peruvian authorities took a step towards the eradication of torture when Congress passed Law N° 26926, which modified Peru's Criminal Code by criminalizing torture as a crime in itself. The law defines torture as a "crime against humanity", punishing with five to 20 years' imprisonment any "civil servant or public official", as well as "any person acting with the consent or acquiescence of a public official" who is found guilty of "inflicting pain or serious suffering to others"¹⁴.

¹⁴ Article 321 of Peru's Criminal Code, incorporated by Law N° 26926 on 19 February 1998 reads: "Any civil servant, public official or person acting with the consent or acquiescence of the former, who inflicts pain or suffering to others, either physical or mental, or who subjects a person to conditions or methods which deny their personality or diminish their physical or mental capacity, even if they do not cause physical or mental pain, in order to obtain a confession or information either from the victim or a third person, or to punish them for anything they have done or are believed to have done, or to intimidate or coerce them, will be imprisoned for no less than five years and no more than ten. If the torture results in the victim's death, or causes serious injury, or the agent could have prevented this result, he/she will be imprisoned for no less than eight years and no more than 20, or for no less than six and no more than 20 respectively." (Translation by Amnesty International) *"El funcionario o servidor público o cualquier persona, con el consentimiento o aquiescencia de aquel, que inflija a otro dolores o sufrimientos graves, sean físicos o mentales, o lo someta a condiciones o métodos que anulen su personalidad o disminuyan su capacidad física o mental, aunque no causen dolor físico o aflicción psíquica, con el fin de obtener de la víctima o de un tercero una confesión o información, o de castigarla por cualquier hecho que haya cometido o se sospecha que ha cometido, o de intimidarla o de coaccionarla, será reprimido con pena privativa de libertad no menor de cinco ni mayor de diez años. Si la tortura causa la muerte del agraviado o le produce lesión grave o el agente pudo prever este resultado, la pena privativa de libertad será respectivamente no menor de ocho ni mayor de veinte años, ni menor de seis ni mayor de doce años.*

To Amnesty International's knowledge, since torture was criminalized in 1998 only in two cases of torture have members of the security forces been charged, convicted and sentenced of this crime.¹⁵

4. Article 9: Guaranteeing the right to liberty

Article 9 of the ICCPR requires Peru to ensure that no-one is subjected to arbitrary arrest or detention. Since 1992, however, when Peru's current anti-terrorism legislation came into effect, Amnesty International has documented the cases of hundreds of prisoners falsely charged with terrorism-related offences whom the organization considers to be prisoners of conscience and possible prisoners of conscience.

The Peruvian authorities acknowledged in the mid 1990's that there were "innocent prisoners" in high security prisons and established a Special Commission to review these cases. The Commission, which came into effect in August 1996 and whose mandate ended on 31 December 1999, had the power to recommend to the President of the Republic cases in which he should exercise his Constitutional right to pardon. Over 450 prisoners were pardoned and released while the Commission operated, which Amnesty International welcomes. However, the organization is concerned that during 1999 at least 60 prisoners whose cases were reviewed by the Commission were not granted the pardon it recommended to the President. To date these prisoners remain in detention.

Amnesty International is also concerned at reports by human rights organizations that there are still over 200 cases of prisoners falsely charged with terrorism-related offences in Peruvian prisons. The Council for Human Rights at the Ministry of Justice has been granted the power to review these cases since the Special Commission ended its mandate in December 1999. By the end of June 2000 Amnesty International was not aware of the Council for Human Rights having reviewed any of these cases. According to information received by the organization the Peruvian Congress has not yet approved the regulations on the Council's responsibilities.

¹⁵ According to information received by the organization, on 29 November 1999 three police officers received prison sentences of four and six years for the torture of Huber Mendez Barzola in March 1999 in the police station of the city of Huamanga, Ayacucho Department. In addition, one prison officer was sentenced under the 1998 legislation which criminalizes torture to 15 years imprisonment in August 1999 for the torture of Pascual Espinoza Loma who died in January 1999 in the Yanamilla prison in Ayacucho department as result of torture. Another prison guard was absolved of the charges but the Supreme Court of Justice annulled the sentence and ordered a new trial. By the end of 1999 this trial had not yet been started.

In addition, Amnesty International is concerned that over 5,000 people, known as *requisitoria* ("wanted people"), are reportedly named on arrest warrants issued under the various provisions of Peru's anti-terrorism legislation.

Human rights organizations in the country as well as the Peruvian Ombudsman have repeatedly expressed concern about the *requisitoria*. The only evidence against most of them are the testimonies of former armed opposition group members known as *arrepentidos* (repentants). These people took advantage of the Repentance Law (*Ley de arrepentimiento*), which from May 1992 to November 1994 gave benefits (such as reduced sentences) to members of armed opposition groups who gave information leading to the capture of other alleged members of their organisations. The police have arrested many people on the unsupported evidence of "repentants". Whole communities of *requisitoria* are reported to live in fear, after warrants were issued for their arrest although most are reported to have no links with armed opposition groups.¹⁶

5. Article 14: Guaranteeing the right to a fair trial

¹⁶ See Amnesty International's Urgent Action, AMR 46/16/00, 12 June 2000.

Peru is also failing to meet its obligation under article 14 of the ICCPR. Amnesty International considers that under the current anti-terrorism legislation those charged with terrorism-related crimes do not receive a fair trial. For example, those charged with the terrorism-related offence of treason¹⁷ are still tried under the military justice system. Amnesty International considers that military courts in Peru are neither independent nor impartial. Under the military justice system those who intervene in the trial, whether prosecutors or judges, are military officers subordinated to the military hierarchy. In addition, under the *Ley Orgánica de Justicia Militar*, the regulations that govern procedures in military courts, judges are not required to have a judicial background. Thus in these trials tribunals fail to meet international standards for fair trial.

The UN Special Rapporteur on the independence of judges and lawyers stated after his 1996 visit to Peru that military tribunals did not guarantee the right to an independent and impartial tribunal or to a fair trial.¹⁸ Furthermore, the UN Human Rights Committee stated in its Preliminary Observations to Peru's third periodic report in 1996 its "serious doubts about the independence and impartiality of judges of military courts and emphasised that "trials of non-military persons should be conducted in civilian courts before an independent and impartial judiciary"¹⁹. The Inter-American Commission on Human Rights also concluded in their 1997 annual report that these tribunals did not guarantee due process.²⁰

Provisions of anti-terrorism legislation violate Article 14.3 (e) which enshrines the right of those charged with criminal offences "to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". Under the anti-terrorism legislation police and military personnel involved in the detention and questioning of the accused are prohibited from appearing as witnesses before military or civilian courts, whether at the

¹⁷ Decree Law N°25475 was the first of a set of anti-terrorism decrees issued in 1992 to combat the armed opposition. The definition of "crimes of terrorism" under this law is wide-ranging and lacks precision. Persons accused of these crimes range from those who "carry out acts against the life, physical integrity, health, freedom and security of individuals", to those who, "*by whatever means*" (Amnesty International's emphasis), incite the commission of terrorism-related crimes, are seen to favour or excuse such crime. In addition Decree Law N°25659, defines the terrorism-related "crime of treason" with the terms set out in Decree Law N°25475, but links this crime to the means employed and their effects on property and life. Those accused of being members of an armed opposition group, whether in their capacity as leaders or by engaging in operations designed to attack and kill, and anyone who aids and abets the commission of "crimes of terrorism", may be charged with treason.

¹⁸ UN Doc. E/CN.4/1998/39/Add.1

¹⁹ UN Doc. CCPR/C/79/Add.67, para. 12.

²⁰ OAS Doc. OEA/Ser.L/V/II.98, page 985.

hearing convened by examining judges or at the trial proper and the subsequent appeal hearings.

Amnesty International is also concerned that in many of the cases of torture of people accused of terrorism-related offences there is evidence that detainees are tortured and ill-treated to extract confessions and information, which is admitted as evidence during the trial. Thus Peru has failed to meet its obligation under article 14. 3(g) to ensure that those charged with a criminal offence are not "compelled to confess guilt".

In addition, all those persons who have been falsely charged with terrorism-related offences and who have been pardoned by the President of the Republic on the grounds that there has been a miscarriage of justice have not been compensated as required by Article 14 (6) of the Covenant.

Amnesty International is also concerned that Peru's Constitutional Tribunal has not been able to decide on constitutional matters since 1997 when three judges were removed by Congress because they ruled that it was unconstitutional for President Alberto Fujimori to run for a third term in office. In addition, over 80% of the judges and public prosecutors in Peru are "provisional" and can therefore be removed without reason which limits their independence and impartiality.²¹

6. Article 19: Guaranteeing the right to freedom of expression

Amnesty International considers that Peru is not meeting its obligation under article 19 (1) and (2) of the ICCPR. In recent years, and in particular in the run up to the recent elections, Amnesty International has received continued reports of death threats, intimidation and harassment to journalists and leaders of the opposition.

Journalists working for the daily newspaper *La República*, for example, have been intimidated and threatened throughout these last two years. In May 1999 a tabloid newspaper launched a satirical version of *La República* called "*Repúdica*" in which it accused its editor and other journalists of being sympathisers of armed opposition groups. At the time *La República* had been publishing articles about corruption in the Peruvian government as well as investigating links between the *Servicio de Inteligencia Nacional*, (SIN), National Intelligence Service, and the tabloid's campaign against journalists of *La República*.

²¹ See Chapter 3 of Doc OEA/Ser.L/V/II.106

Harassment and intimidation of journalists through court action have become commonplace in recent years. Baruch Ivcher, the owner of a television channel who was stripped of his Peruvian nationality, Enrique Zileri, director of the weekly magazine *Caretas*, and journalist Guillermo Gonzáles Arica of the *Asociación Prensa Libre*, Free Press Association, have all been subject to judicial proceedings in recent years which appear to have had the objective of silencing their criticisms to the government.

More recently journalist Fabián Salazar Olivares was beaten up and tortured in May 2000 by four men who burst into his office claiming to be from the *Superintendencia Nacional de Admistración Tributaria*, Inland Revenue Office, after he uncovered evidence of corruption in Peru's presidential elections.

In its recently published report on Peru's human rights record, the Inter-American Commission on Human Rights considers that Peru does not enjoy the conditions which allow for individuals to fully exercise their right to freedom of expression.²²

7. Undermining international human rights protection

Amnesty International considers that Peru does not take its international obligations for the protection of human rights seriously.

The government of Peru has failed to comply with the recommendations of the Human Rights Committee on individual cases. For example, in the case of Victor Polay Campos, submitted to the Human Rights Committee in March 1993, the Committee considered that "Mr. Polay Campos should be released unless Peruvian law provides for the possibility of a fresh trial that does offer all the guarantees required by article 14 of the Covenant."²³ This recommendation has not been implemented yet.

²² See OEA/Ser.L/V/II.106, Doc. 59 rev., 2 June 2000.

²³ Human Rights Committee, Communication No 577/1994 : Peru. 09/01/98. CCPR/C/61/D/577/1994. (Jurisprudence)

In addition, Amnesty International notes with grave concern that in July 1999 Peru withdrew with immediate effect from the jurisdiction of the Inter-American Court of Human Rights. The Inter-American Court provides victims the benefit of independent judicial scrutiny in cases where their rights under the American Convention on Human Rights have been violated and in which domestic remedies have been exhausted or are unavailable or ineffective.

Peru has also failed to enforce such remedies when granted by the Inter-American Court. For example, in November 1998, the Inter-American Court ruled in the case of Ernesto Castillo Paez, who "disappeared" in 1990, that the Peruvian State had violated articles 7 (right to liberty), 5 (right to physical integrity), 4 (right to life) and article 25 (right to judicial protection) of the American Convention on Human Rights. In view of these violations the Court ordered the state of Peru, among others, to pay the sum of US\$ 245.021,80 to Ernesto Castillo Paez' family and to identify those responsible for his "disappearance" and to bring them to justice. To Amnesty International's knowledge, by the end of May 2000 the Peruvian state had not yet complied with this ruling. The case of Ernesto Castillo Paez is one among other cases in which the Peruvian state has not enforced the remedies granted by the Inter-American Court.

8. Conclusions

Amnesty International considers that the protection of human rights have not been at the forefront of President Fujimori's two terms in office. During the past decade the Peruvian authorities have undermined the independence and impartiality of the judicial system and further weakened the rule of law. As noted by the Inter-American Commission on Human Rights' recent report on the country, the rule of law in Peru is ineffective.²⁴

In June 2000 the General Assembly of the Organization of American States (OAS) sent a mission to Peru in the wake of elections which were marred by allegations of fraud. The purpose of the mission was to explore "with the government of Peru and other sectors of the political community, options and recommendations aimed at further strengthening democracy in that country, in particular measures to reform the electoral process, including reform of judicial and constitutional tribunals as well as strengthening freedom of the press".²⁵ OAS Secretary General and the Canadian Minister of Foreign Affairs

²⁴ Doc OEA/Ser.L/V/II.106

²⁵ OAS General Assembly, Resolution 1753, Adopted in the second plenary session held on 5 June 2000.

visited Peru in the last week of June. The mission has recommended a number of issues to be discussed in order to strengthen democracy, including that the Constitutional Tribunal be reinstated, accepting the jurisdiction of the Inter-American Court of Human Rights and the establishment of a National Plan for the protection of human rights.

Amnesty International considers that it is imperative for the UN Human Rights Committee to urge the government of Peru to fully respect all the rights enshrined in the International Covenant of Civil and Political Rights and demonstrate that it is serious about protecting the human rights of its people.

**CCPR/CO/70/PER Concluding Observations of the Fourth Periodic Report: Peru.
01/11/2000**

Category : UN Treaty Bodies\HRC\Concluding Observations

Country profile : Peru

Theme profile : Civil and political rights

CCPR/CO

/70/PER

HUMAN RIGHTS COMMITTEE

Seventieth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES
PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding observations by the Human Rights Committee

Peru

1. The Committee considered the fourth periodic report of Peru (CCPR/C/PER/98/4), at its 1879th, 1880th and 1881st meetings, held on 23 and 24 October 2000 and, at the 1892nd meeting, held on 1 November 2000, adopted the following concluding observations.

A. Introduction

2. The Committee welcomes with satisfaction the fourth periodic report submitted by the State party, as well as the comments on the concluding observations and recommendations of the Committee on the third periodic report (CCPR/C/83/Add.4). It also appreciates the delegation's willingness to establish a dialogue with it. However, it regrets the fact that the report does not contain relevant statistical data and does not deal adequately with the difficulties the State party encounters in implementing the Covenant.

B. Positive aspects

3. The Committee welcomed the announcement of the holding of early presidential elections in 2001 and hopes that they will take place in an atmosphere of transparency and freedom, in accordance with international standards.

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4. The Committee welcomes with satisfaction the fact that "faceless" courts have been abolished as the Committee recommended (CCPR/C/79/Add.67); the fact that the offence of terrorism has been transferred from the jurisdiction of the military courts to that of the ordinary criminal courts; and the fact that the state of emergency affecting areas of the national territory has been rescinded.

5. The Committee regards it as a positive sign that, under Act No. 26,926 of 21 February 1998, torture has been characterized as an offence in the chapter of the Penal Code on crimes against humanity.

6. In the Committee's opinion, another favourable development is that machinery has been established for the protection of women, such as the Office of the Ombudsman Specializing in Women's Rights within the Ombudsman's Office and the Congressional Commission on Women and Human Development.

The Committee also expresses its satisfaction with the adoption of civil and criminal legislation recognizing the rights of women.

C. Principal subjects of concern and recommendations

7. The Committee again regrets the fact that Peru has not taken account of the recommendations made following the consideration of the third periodic report (CCPR/C/79/Add.67, paras. 20-26 and CCPR/C/79/Add.72, paras. 19-25). Many of the subjects of concern referred to at that time continue to be matters of concern at present.

8. The Committee considers that, despite transitional provision 4 of the Constitution of Peru stating that the rules relating to the rights and freedoms which the Constitution recognizes are interpreted in accordance with the International Covenant on Civil and Political Rights and other relevant treaties ratified by Peru, the rank of the Covenant in the internal legal system is

not clear and the rights recognized in it do not appear to be respected.

The Committee recommends that the necessary legal measures should be taken to guarantee the rights recognized in the Covenant, in accordance with article 2, paragraph 1, of the Covenant.

9. The Committee deplores the fact that its recommendations on the 1995 amnesty laws have not been followed and reiterates that these laws are an obstacle to the investigation and punishment of the persons responsible for offences committed in the past, contrary to article 2 of the Covenant. The Committee is deeply concerned about recent information stating that the Government is sponsoring a new general amnesty act as a prerequisite for the holding of elections.

The Committee again recommends that the State party should review and repeal the 1995 amnesty laws, which help create an atmosphere of impunity. The Committee urges the State party to refrain from adopting a new amnesty act.

10. The Committee expresses its concern about the fact that the judiciary is still being reorganized in Peru and that the existence of the Executive Judiciary Commission, which has broad powers, leads to interference by the Executive and undermines the independence of the judiciary and the rule of law. One of the consequences of this reorganization is the large number of

temporary judges. The Committee is especially concerned about the dismissal of the three Constitutional Court judges, Delia Revoredo Marsano de Mur, Manuel Aguirre Roca and Guillermo Rey Terry, by the Congress in 1997. An impartial and independent system of justice is essential for compliance with a number of articles of the Covenant, notably article 14.

(a) The State party must take the necessary measures to regularize the situation of the temporary judges, who may be dismissed peremptorily, and to guarantee their job security.

(b) The State party must reinstate the three Constitutional Court judges in their posts in order to normalize the Court.

(c) The State party must establish a mechanism guaranteed by law that ensures the independence and impartiality of judges and eliminates the possibility of the Executive interfering in the Judiciary.

11. The Committee appreciates the fact that Peru has released some of the persons convicted of the crime of terrorism on insufficient evidence and has pardoned them. However, it states once again that a pardon does not constitute full compensation for the victims of proceedings in which the rules of due process have been breached and in which innocent persons have been found guilty.

(a) The State party must establish an effective mechanism for the review of all sentences imposed by the military courts for the offences of terrorism and treason, which are defined in terms that do not clearly state which conduct is punishable.

(b) The State party must also release immediately all persons whose situation has now been decided by the Pardons Board.

12. The Committee deplores the fact that the military courts continue to have jurisdiction over civilians accused of treason, who are tried without the guarantees provided for in article 14 of the Covenant.

The Committee refers in this context to its General Comment No. 13 on article 14 and emphasizes that the jurisdiction of military courts over civilians is not consistent with the fair, impartial and independent administration of justice.

13. As indicated during the consideration of the third periodic report, the Committee considers that detention for up to 15 days in cases of terrorism, drug trafficking and espionage does not comply with article 9 of the Covenant.

It draws attention to the State party's obligation to amend its legislation so that any person who has been

detained may be placed without delay at the disposal of the judiciary.

14. The Committee expresses its concern about poor conditions of detention, particularly in Lurigancho prison in Lima and the maximum security prisons of Yanamayo, in Puno, and Challapalca, in Tacna (high-altitude prisons where visiting rights, inter alia, are far from easy to exercise owing to the difficulty family members have in reaching them). Conditions in these prisons do not comply with article 10 of the Covenant.

The Committee urges the State party to take the necessary measures to improve prison conditions in Peru. In particular, it urges the State party to reduce the prison population of Lurigancho prison and close down Yanamayo and Challapalca prisons.

15. The Committee expresses its concern about the continuing practice of one year's isolation for convicted and unconvicted prisoners, in accordance with the regulations on the living conditions and progressive treatment of prisoners who are difficult to rehabilitate, those awaiting trial or sentenced for ordinary offences or for terrorism or treason. Such isolation may be extended when the person concerned breaks a rule, however minor.

The Committee urges the State party to review this practice, which affects the physical and mental health of persons deprived of their liberty and constitutes cruel,

inhuman or degrading treatment or punishment, thus hampering full compliance with articles 7 and 10 of the Covenant.

16. The Committee notes with concern that there is a growing number of complaints of systematic harassment and death threats against journalists intended to undermine freedom of expression.

The Committee requests the State party to take the necessary measures to put an end to direct and indirect restrictions on freedom of expression, to investigate all complaints which have been filed and to bring the persons responsible to justice.

17. The Committee deplores the methods used by Peru to take control of communications media away from persons critical of the Government, including stripping one of them of his nationality.

The Committee requests the State party to eliminate these situations, which affect freedom of expression, in accordance with article 19 of the Covenant, and to make effective remedies available to those concerned.

18. The Committee deplores the fact that, of the four opposition members of Parliament who were victims of repeated acts of intimidation and about whom it requested reports from the Government, vague replies were given only about Mr. Gustavo Molme Llonca, who has since died; no explanation was given

about the three others, Javier Díez Canseco, Henry Pease García, Jorge del Castillo and some of their co-workers, and not a single reference was made to the investigations conducted in order to find the persons responsible.

The intimidation of members of Parliament, which prevents them from representing their constituents and exercising their functions freely and independently, must cease immediately and acts of intimidation must be investigated and the persons responsible punished.

19. The Committee considers the effective implementation of laws safeguarding human rights to be of the greatest importance.

The Committee requests the State party, in its next report, to provide detailed information on the effective implementation of the new civil and criminal legislation recognizing the rights of women.

20. It is a matter of concern that abortion continues to be subject to criminal penalties, even when pregnancy is the result of rape. Clandestine abortion continues to be the main cause of maternal mortality in Peru.

The Committee once again states that these provisions are incompatible with articles 3, 6 and 7 of the Covenant and recommends that the legislation should be amended to

establish exceptions to the prohibition and punishment of abortion.

21. The Committee is concerned about recent reports of forced sterilizations, particularly of indigenous women in rural areas and women from the most vulnerable social sectors.

The State party must take the necessary measures to ensure that persons who undergo surgical contraception procedures are fully informed and give their consent freely.

22. The Committee sets 31 October 2003 as the date for the submission of the fifth periodic report of Peru. It requests that the text of the fourth periodic report of the State party and the present concluding observations should be published and widely disseminated in Peru and that the next periodic report should be made available to civil society and non-governmental organizations working in Peru.
