COMMITTEE AGAINST TORTURE
36th session (Geneva, 1 to 19 May 2006)

Reports of States

Peru (fourth periodic report)

Information submitted to the Committee

Peru submitted its fourth periodic report[1] due in 2003. However, no written replies to the Committee's list of issues[2] were submitted. The report is composed of four parts: responses to concerns in the third periodic report; recommendations of the Committee; conclusions of the Article 20 inquiry; and information on measures taken to implement the *Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment* (the Convention). No NGOs is mentioned in the list of entities[3] involved in the preparation of the report. The information provided by the State Party is mainly in the nature of summaries of legal action taken by the Government, the Constitutional Court, and the Truth and Reconciliations Commission (TRC). The report contains specific information on cases of torture; training courses, workshops and seminars provided by the Government; and the conclusions of the confidential inquiry made by the Committee under Article 20 of the Convention. However, the report is severely lacking information on substantive implementation. The only part of the report, describing the actual outcome of the measures taken, is the one concerning places of detention. The information provided in the report is very focused on the period before the regime change providing comparably very little information on the actual situation in the country since 2000.

NGOs have addressed incidents occurring in recent years. In one case a torture victim got targeted by police officers against whom he had filed complaints of torture. The police officers allegedly threatened and attempted to kill the victim. With regards to this case, Amnesty International highlighted the ineffectiveness of the criminal legislation prohibiting torture passed in 1998. Amnesty International blames the lack of will within the Government to investigate and prosecute alleged perpetrators. Instead the Government charges them with lesser offences. However, it should be mentioned that Amnesty International filed another report complementing the Government on the action taken on threats against a human rights organisation in southern Cuzco. Another very important issue raised by Human Rights Watch, is the failure of the Government to disclose the identity of military officials responsible for acts for torture. Due to a widespread use of pseudonyms in the military, identification has been extremely hard if not impossible[4]. The issue came up recently when allegations of human rights abuses including torture and forced disappearances surfaced against presidential candidate Ollanta Humala. In this case the army failed to provide the identity of the pseudonym "Carlos" allegedly referring to Humala.

The State party has made declarations under Article 21 and 22 of the Convention. The State Party has not ratified the *Optional Protocol to the Convention against Torture and other Cruel, Inhumane or Degrading Treatment or Punishment*. When asked about this by the Committee the delegation replied that legislation approving the ratification the *Optional Protocol* is just awaiting ratification by congress.

Themes and issues

Administration of justice

Through a wide range of questions relating to the administration of justice in Peru, the Committee showed its genuine concern about this particular issue. While a vast number of topics was touched upon, the main focus of the Committee was on the independence of judges and prosecutors and the work of the National Magistrates Council (NMC); the culture of impunity still existing in Peru; the division of judicial power between military and public courts; situations of state of emergency and the option of judicial appeal; and the general state of affairs in the penitentiary system.

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[1] CAT/C/61/Add.2
[2] CAT/C/PER/Q/4
[3] CAT/C/61/Add.2, par. 2
[4] Peru: Military Shields Identity of Rights Abusers

The Committee asked for more specific information on the legal set-up of NMC and how the Government ensured the independence of judges and prosecutors. Special concerned was showed about the practice of appointment of judiciaries and prosecutors on seven-year terms. The State party explained that the NMC is an administrative body and that approximately 10% of the judges were appointed for seven-year terms. The Committee reiterated its concern about the appointment procedure several times but the delegation did not elaborate on the subject.

Another important issue was the culture of impunity. While the legislative framework seemed in place due to new legislation and jurisprudence from the Constitutional Court there has been a remarkable lack of convictions. The State party recognised the problem but failed to provide either an explanation or some plan of action. However, the delegation did state that in the specific case of the unwillingness of the military to provide information on the identity of offenders acting under pseudonyms, action was being taken.

The Committee addressed several issues in the penitentiary system. Concern was expressed about the conditions in the Challapalca and Yanamayo prisons and the existence of the Centro de Reclusión de Máxima Seguridad de la Base Naval del Callao (CEREC) detention centre run by the military. The State party replied that the Challapalca and Yanamayo prisons were in the process of being closed down. However, these facilities would not be closed until the opening of a new facility known as “Piedras Gordas”. Regarding CEREC the delegation felt that considering the violent nature of the detainees (mainly members of the Shining Path and Tupac Amaru) there was a need for such a facility. Furthermore, the Committee asked for an explanation for the suspension of International Committee of the Red Cross (ICRC) access to detention facilities between 2003 and 2004. The State party explained that the ICRC suspended the visits during negotiations of an agreement on the procedures and reports of visits. However, the view of the ICRC was slightly different claiming that visits was suspended due to a clause in the new prison regulation stipulating that advanced warnings should be given prior to prison visits. The rule was later amended relating to ICRC and the visits continued.

States of emergency was another matter of concern to the Committee. Questions were posed about the option of appealing such a decision and reports of police or army brutality during these periods. The State party reported that there where constitutional guaranties against abuse of the mechanism, however these were never implemented. The State party also mentioned Habeas corpus complaints as an indirect way to challenge the legality of the states of emergency. The State party never directly touched upon the reports of police and army brutality during states of emergency and the Committee failed to follow up on this issue.

Legislative Implementation.
The Committee mainly focused on substantive implementation, dealing only briefly with more general legal issues. However, the Committee did address two important issues. One member disagreed with the assessment of the delegation that the definition of torture in the penal code of the State party was aligned with the one of the Convention. The member did not feel assured that the penal code provided protection against “suffering inflicted for any reason based on any type of discrimination”. Another member enquired whether there is any legislation prohibiting cruel, inhumane or degrading treatment (CID). The delegation stated that it found the definition of torture in the penal code aligned with the one in the Convention. Without responding directly to the question of CID, the delegation pointed out that domestic law must be interpreted in accordance with international human rights law and that the Government was dedicated to aligning the provisions of the penal code with international law. While it would have been interesting to know more about whether civil society in Peru can rely on the prohibition of CID in Article 16 of the Convention for protection, the Committee did not follow up on this issue.

Substantive implementation:
The Committee mainly focused on the issues of education and training (Art. 10), and the right to redress (Art. 14). One of the main concerns of the Committee was the high number of cases of abuse in the military, the police force, and the penitentiary system. Noting the relatively high amount of training courses, on various issues relating to torture, presented both in the report and during replies, the Committee was concerned that these might not be effective and sought information on measures taken to improve the training programs in these areas. To this the delegation replied that the ICRC is participating in the training of both the military and the police.

The Committee stressed the need for proper compensation to victims of torture specifically highlighting the very low figures of the compensations. The delegation replied that the size of the compensation was set according to

decisions by the Inter-American Court of Human Rights in torture cases. The Committee did not follow up on this issue.

In general, and especially around this issue the delegation was mostly talking about legislative measure, programs, and initiatives. When asked about factual outcomes, the State party would usually avoid answering or reluctantly provide a minimum of statistical data. During the session it seemed that the biggest issue in Peru was the de facto implementation of the quite extensive body of legislation, programs, and practices. This was also expressed by the delegation itself when it stated that the biggest problem was not violence but impunity.