



THE UNITED NATIONS COMMITTEE AGAINST TORTURE

49TH session

29 October - 23 November 2012

**INTERNATIONAL COMMISSION OF JURISTS (ICJ)
AND COMISIÓN DE DERECHOS HUMANOS (COMISEDH-PERU).
PARALLEL REPORT ON THE SITUATION OF TORTURE IN PERU**

October 2012

P.O. Box, 91, Rue des Bains, 33, 1211 Geneva 8, Switzerland

Tel: +41(0) 22 979 3800 – Fax: +41(0) 22 979 3801 – Website: <http://www.icj.org> - E-mail: info@icj.org

Comisión de Derechos Humanos-Peru, COMISEDH, is a non-profit civil association, with 33 years experience in the defence and promotion of human rights and the assertion of citizenship and democracy in Peru. In order to fulfil its objectives COMISEDH carries out actions involving investigation, the formulation of proposals for legislation and public policies, political advocacy, training, communications, education, legal assistance and citizen vigilance with a focus on gender, human rights and interculturality. COMISEDH was founder of the National Coordinator of Human Rights (CNDDHH) in 1985. It works at the national level, with emphasis on the central-southern Andean area of the country. COMISEDH is the most important organisation in the fight for the eradication of torture in the country, and is coordinator of the Working Group against Torture which brings together the human rights organizations that work on this issue in Peru.

The International Commission of Jurists is composed of 60 eminent judges and lawyers from all regions of the world, and promotes and protects human rights through the Rule of Law, by using its legal experience to develop and strengthen national and international justice systems. Established in 1952, the Commission has enjoyed consultative status with the UN Economic and Social Council since 1957 and is active on the five continents. The Commission aims to ensure the progressive development and the effective implementation of international human rights and international humanitarian law, secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

ICJ and COMISEDH-PERU PARALLEL REPORT ON THE SITUATION OF TORTURE IN PERU

1. The International Commission of Jurists (ICJ) and Comisión de Derechos Humanos (COMISEDH-Peru) present the following independent parallel report before the United Nations Committee against Torture (henceforth Committee) which, in its 49th session, October and November 2012, will examine the sixth periodic report of the Peruvian State on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (henceforth United Nations Convention against Torture.)
2. The present report contains information and references regarding the situation of torture in Peru, on the basis of the provisions set out in the United Nations Convention against Torture, independently to what the Peruvian State presented before the Committee in its June 2011 report¹. The report is structured following the articles of the Convention, and in reference to the questions and issues presented to the Peruvian State by the Committee.

ARTICLE 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

3. Although torture is at present one of the most widespread forms of human rights violation in Peru, the Peruvian State does not carry out the necessary actions to prevent and punish it, it does not guarantee the victims access to justice and due reparation in its comprehensive dimension, and neither does it provide protection to torture victims and their defenders, who have been subjected to threats, harassment, and attempts on their lives.
4. Even though the Peruvian Criminal Code defines torture as a crime in article 321², the adopted definition is controversial in the following respects:
 - a) Although it is positive that two forms of torture are established (i. that serious pain or suffering, either physical or mental, is inflicted on the victim; or ii. that he is subjected to conditions or methods that obliterate his personality or diminish his physical or mental capacity), it must be noted that the second form of torture (which is established in accordance with the provisions of the Inter-American Convention to Prevent and Punish Torture – henceforth the Inter-American Convention) is incorrectly defined as the Inter-American regulation states that the methods used be intended to obliterate the personality of the victims or to diminish his physical or mental capacities; that is, it does not state that an effect has to be produced, in contrast to what is established in the Peruvian criminal legislation. This creates an inadequate legal framework for the protection of persons.

¹ In the present report the numbering of the subjects addressed has been followed in accordance with the list that the Committee established for the Peruvian State's report

² *Peruvian Criminal Code. Article 321.- Torture:* A public servant or official, or any person with their consent, who inflicts serious physical or mental pain or suffering on another person, or who submits another to conditions or methods that obliterate their personality or diminish their physical or mental capacity, even though they do not cause physical pain or mental affliction, for the purpose of obtaining from the victim or a third party a confession or information, or of punishing that person for any act that he may have committed or suspected of having committed, or of intimidating or coercing the person, shall be reprimanded with the punishment of deprivation of liberty for no less than five and no more than ten years. If the torture causes the death of the injured party or produces serious injury and the agent could have foreseen such results, the punishment of deprivation of liberty shall be for no less than eight and no more than twenty years in the first case, and no more than six or less than twelve years in the second one.

b) The crime of torture regulated in the criminal legislation only envisages physical or mental effects, but not the moral integrity which is stipulated in the Political Constitution, Article 2, Paragraphs 1 and 24, subparagraph h)³. When judging, the judge only bases himself on what is stipulated in the Criminal Code, and will therefore omit the possible moral damage inflicted on the victim.

c) The motives for torture, envisaged in the Criminal Code, include 4 hypotheses: obtain information, punish the victims, intimidate or coerce him. No other motive has been envisaged, which means it would be difficult to classify a behaviour in which torture is committed, for example, because of sadism or other reasons. In such circumstances a situation of impunity could arise in the method described, as in other methods not envisaged in the criminal legislation but that are indicated in international norms.

d) Although the punishment of deprivation of liberty is established, the *quantum* of punishment is not coherent with the punishment envisaged for other crimes or equal or less seriousness, as for example, in the cases of kidnapping or aggravated robbery⁴.

e) In spite of being a crime under international law, the Criminal Code has not expressly envisaged its imprescriptibility, but, on the contrary, subjects the pursuit of the punishment to the normal time-limits set out in the Code. A longer prescription period has not even

³ *Article 2.- Fundamental rights of the person:* Every person has the right to: 1. Life, his identity, his moral psychic and physical integrity and his free development and well-being. The unborn child is a rights-bearing subject, in any event which is beneficial for him. [...] 24. To freedom and personal security. In consequence: h. No one shall be a victim of moral, psychical or physical violence, nor be subjected to torture or inhuman or humiliating treatment. Any individual may immediately request a medical examination of the injured person or of someone who is unable to appeal to the authorities by himself. Statements obtained by means of violence are null and void. Whoever employs them, will be held liable.

⁴ *See what is provided for in the Peruvian Criminal Code. Article 152.- Kidnapping:* The person who, without right, motive or justifiable reason deprives another of his personal liberty, whatever be the motive, purpose, method or circumstance or the time that the victim suffers the privation or restriction of his liberty, shall be reprimanded with the punishment of deprivation of liberty for no less than twenty and no more than thirty years. The sentence shall be no less than thirty years when: 1. The victim is abused, corrupted, treated with cruelty or his life or health are endangered. 2. There is a pretext of non-existent mental illness in the victim. 3. The victim or agent is a civil or public servant. 4. The victim is a diplomatic representative of another country. 5. The victim is kidnapped for his activities in the private sector. 6. The victim is a relative, up to the third degree of consanguinity or second of affinity, of the persons referred to in the preceding paragraphs 3, 4 and 5. 7. The purpose is to force a civil or public servant to release a detainee or grant illegal demands. 8. It is committed to force the victim to join a criminal organization. 9. It is committed to obtain somatic tissues from the victim. 10. The victim suffers slight injuries. 11. It is committed by two or more persons or minors or any other person immune from prosecution. 12. The victim suffers a serious illness. 13. The victim is pregnant. The same sentence shall be applicable to whoever with the purpose of contributing to the commission of the crime of kidnapping, provides information he may have known about due to or on the occasion of his duties, office or employment, or deliberately provides the means for the commission of the crime. The sentence shall be life imprisonment when: 1. The victim is a minor or over the age of seventy. 2. The victim suffers a disability and the agent takes advantage of this circumstance. 3. If grievous injuries or the death of the victim are caused during the kidnapping or as a consequence of this act. *Article 189.- Aggravated robbery: The sentence shall be no less than twelve and no more than twenty years* if the robbery is committed: 1. In an inhabited house. 2. During the night or in a desolate place. 3. Using firearms or bladed weapons. 4. With the participation of two or more persons. 5. In any means of transportation, public or private, of passengers or cargo, land, railway, lake and river terminals, ports, airports, restaurants and similar places, places of lodging and accommodation establishments, protected natural areas, sources of mineral-medicinal waters with tourist purposes, property that belongs to the cultural heritage of the Nation and museums. 6. Pretending to be an authority or public servant or private sector worker or showing false credentials as an authority. 7. Against minors, disabled persons, pregnant women or elderly persons. 8. On a motor vehicle. The sentence shall be no less than twenty and no more than thirty years if the robbery is committed: 1. When injuries are inflicted on the physical or mental integrity of the victim. 2. Abusing the physical or mental incapacity of the victim or through the use of drugs, chemical substances or medical drugs against the victim. 3. Placing the victim or his family in a serious economic situation. 4. On goods of a scientific value or that make up the cultural heritage of the Nation. The sentence shall be life imprisonment when: the agent acts as a member of a criminal organization or gang, or if, as a consequence of the fact, the death of the victim is produced or grievous injuries are caused to his physical or mental integrity [the underlining was added by us].

been envisaged. This is inconsistent with what is established in international treaties on the matter and the jurisprudence of international courts.

5. Likewise, the Criminal Code has not envisaged the definition of the crime of cruel, inhuman or degrading treatment, being contrary to what is stipulated in the United Nations Convention against Torture.

6. In this regard, paragraph 25 of the State Report refers to Draft Law No. 04672/2010-CP, presented with the aim of incorporating into the Criminal Code the crime of cruel, inhuman or degrading treatment. However, it must be said that this draft law was not debated in the National Congress and as it was a draft law presented during the 2006-2011 legislative period, when this legislative period ended and as it had not been passed, it was automatically shelved and at present is therefore not awaiting evaluation before any parliamentary Commission.

7. Relevant information is provided below regarding the questions and issues formulated by the Committee to the Peruvian State.

Please provide information that may enable the Committee to have a clear vision of the situation with regard to protection against torture (....since 2005)

8. In the last few years it has become clear that the practice of torture persists in Peru. In 2012 the Ombudsman's Office has received (up to June) 18 complaints of alleged torture and cruel, inhuman or degrading treatment⁵. In previous years the Ombudsman's Office had already received complaints of torture and cruel, inhuman or degrading treatment: between 1998 and 2010 it reported 640 complaints and in 2011, 62 were registered.⁶

9. COMISEDH currently is attending to 144 victims of torture in 23 regions of the country (Metropolitan Lima, Lima Provinces, Callao, Ayacucho, Piura, Pasco, Cusco, Lambayeque, Huancavelica, Ica, Huánuco, Tacna, Puno, Ancash, Junín, La Libertad, Loreto, Arequipa, Cajamarca, Ucayali, Moquegua, Amazonas and Apurímac), corresponding to cases that occurred since 1998. According to the years, in 2005 8 victims were registered, of which 4 were from Lima, 1 from Lambayeque, 1 from Puno and 2 from Loreto; in 2006 9 victims were registered, 1 from Lima, 7 from Huánuco and 1 from Tacna; in 2007 4 victims were registered, 1 from Lima, 1 from Pasco, 1 from Puno and 1 from Ucayali; in 2008 18 victims were registered, 11 from Lima, 1 from La Libertad, 1 from Junín, 1 from Pasco, 1 from Moquegua, 1 from Ayacucho, 1 from Huánuco and 1

⁵ Press Release No. 167/DP/OCII/2012Carta N° 016-2012 of 20 June, 2012. Ombudsman's Office. <http://www.defensoria.gob.pe/modules/Downloads/prensa/notas/2012/NP-167-12.pdf>

⁶ In this respect, the Ombudsman's Office has issued several reports. Thus we have, *Ombudsman's Report No. 91*, "Cases affecting life and alleged torture and other cruel, inhuman or degrading treatment attributed to officers of the national police", in which mention is made of 434 cases affecting life and alleged torture and other cruel, inhuman or degrading treatment, attributed to officers of the National Police registered in the period between March 1998 and August 2004. Likewise, *Ombudsman's Report No. 42*: "The right to life and personal integrity in the performance of military service in Peru", in which a total of 174 cases are given, of which 56 correspond to deaths occurred inside military units and 118 to alleged torture and other cruel, inhuman or degrading treatment registered in the period between April 1998 and August 2002. Similarly *Ombudsman's Report No. 112*, from December 2006, "The difficult path to reconciliation, Justice and redress for victims of violence", which covers the period between September 2004 and July 2006, during which time the Ombudsman's Office investigated 113 cases of alleged torture and other cruel, inhuman or degrading treatment attributed to officers of the National Police. Likewise, between September 2002 and July 2006 the Ombudsman's Office received 72 cases of alleged torture and other cruel, inhuman or degrading treatment attributed to officers of the Armed Forces. We also have *Ombudsman's Report No. 128* (December 2007) "The State and the victims of the violence. Where is our policy on justice and redress headed?" a document that indicates that during this period the Ombudsman's Office has registered 139 cases of alleged torture and other cruel, inhuman or degrading treatment attributed to officers of the Police and the Armed Forces, of Likewise, *Ombudsman's Report No. 139* (December 2008), which states that 530 complaints of alleged which 106 correspond to the National Police (76%) while 33 were attributed to the Armed Forces (24%). Likewise, *Ombudsman's Report No. 139* (December 2008), which states that 530 complaints of alleged torture and mistreatment were received between 2003 and 2008. Finally, there is Letter No. 016-2012-DP/ADHPD from 15 March 2012, directed at the National Coordinator of Human Rights, which refers to cases registered at the Ombudsman's Office during the periods 2009-2010 and in 2011.

from Ica; in 2009 11 victims were registered, of which 7 were from Lima, 1 from Piura, 1 from Junín, 1 from Huancavelica y 1 from Amazonas; in 2010 11 victims were registered, of which 1 was from Lambayeque, 1 from Huancavelica, 3 from Lima, 2 from Junín, 1 from Iquitos, 1 from Pasco, 1 from Apurímac y 1 from Huánuco and finally, in 2011 4 victims were registered, of which 2 were from de Lima, 1 from Cusco and 1 from Loreto. It can thus be seen that Lima is the region with the largest number of cases of torture (according to COMISEDH institutional sources).

10. According to information compiled by COMISEDH torture is practised by the forces of law and order, the main perpetrators being from the National Police. The alleged acts of torture committed by police agents include the cases of "A.L.H" (only initials are given for security reasons), tortured in *Barboncitos* Police Station in the district of San Martín de Porres (Lima region) and that of "L.P.C.", tortured by agents of the *Criminal Investigation Division* in the district of Pueblo Libre (Lima region), which occurred in 2011. Regarding acts committed by members of the Armed Forces, we have the case of "L.A.", who was tortured at the *Los Lores Military Base* in Iquitos (Loreto region) and that of "W.O.C.", tortured at the *Military Base* in *Lambayeque*, both in 2010. With regard to acts committed by prison staff we have, among others, that of "A.A.C." in the *Prison of Quillabamba* (Cusco region), in 2011. In relation to acts committed by members of the municipal *Serenazgo*⁷, we should refer to the case of "S.C.M.", a young man that suffered from schizophrenia and who, in 2008, was accused of stealing a gas cylinder, action for which members of *Serenazgo* from the Municipality of Pisco detained him and made him get into a motored vehicle to take him to the police station in the area. But, while he was being taken to the police station, the vehicle made a detour towards a dark and desolate area, where, after telling the young man to get out and taking him to a tree, they attacked him physically with the purpose of making him confess that he was responsible for the theft.

11. COMISEDH's records at a national level show that approximately 66.17% of those responsible are members of the National Police of Peru, 20.60% are from the Armed Forces, 5.88% from the National Penitentiary Institute (INPE) and 7.35% municipal public servants (*serenos*).

12. The zones where torture occurs are larger than the areas under a state of emergency, which shows that the problem is nation-wide. The problem is not only connected to the fight against narcotrafficking or terrorism, but also appears in the context of National Police actions when confronting alleged acts involving common crime and in situations where the National Police or Armed Forces intervene in social mobilizations that cause disruption of public order.

Most common methods of torture

13. In the cases registered by COMISEDH, torture has consisted of physical punishment of the victims involving beatings delivered using fists and kicking, both aimed at different parts of the body, rape, and the aggressive use of different objects. Many victims have denounced that they have been subjected to beatings with rubber batons, wet rags and other blunt objects; others have stated that they have been victims of drowning in dirty water (with detergent, excrement, etc.) electric shocks; cigarette burns; choking with plastic wrappings or sheets, while the victims are in damp places. These types of action are always accompanied by intimidations, insults, threats, coercion. There are also simulations of the victims' execution, with firearms placed on different parts of the head and they are given false information about their families and relatives. Likewise, with the aim of controlling prostitution, many women have been detained and taken to remote places where they are beaten, made to undress and then abandoned to their fate.

14. Thus, in the cases attended by COMISEDH, 67% presented physical torture and 42% presented physical and psychological torture.

15. Of the cases taken on by COMISEDH, the tortures suffered by the victims left physical injury, some of which were permanent (20%) such as the loss of eyesight (partial or total), of hearing (partial or total), loss of use of part of the body or limitations in the performance of work or daily activities (permanent limp, injuries to the spinal column, etc.) In other cases the victims

⁷ The *serenos* are local municipality servants that work in vigilance and public security.

suffered non-permanent injuries (50%) such as bone fractures, wounds, deep bruises, etc. In several cases torture resulted in the victim's death (14%) due to the seriousness of the physical effects. In addition, over a third of the victims presented psychological effects, such as acute depression, insomnia, low self-esteem, fear, irritability and in many cases a somatisation of their mental problems.

Judicial Outcomes of the cases of torture denounced by COMISEDH

16. The National Criminal Chamber, whose seat is in Lima but has jurisdiction in the whole country, has been in charge of the oral proceedings in the cases of torture. A group of cases (12.1 per cent) that received a sentence (acquittal or conviction) issued by the National Criminal Chamber were sent in appeal to the Supreme Court of Justice, whose seat is also in Lima, and 1.6 per cent of them were subject of rulings that did not allow the victims to achieve justice.

17. All the cases sponsored by COMISEDH in 2011, are still in the first stage; that is, undergoing the prosecutor's investigation (14.7%), without a charge so far being brought before the Criminal Judge. It is important to mention that due to the adverse court decisions taken in 2011, there has had to be recourse to the Inter-American Human Rights System, as in the cases of "C.C.A" and "J.Z.B".

Punishments for members of the Armed Forces

18. Regarding punishments such as the removal of members of the Armed Forces (paragraph 20 of the State Report); the Peruvian State gives no details nor does it append information related to the punishments imposed or the number of members of the Armed Forces that may have been punished for committing the crime of torture.

Please indicate the number of denunciations of torture in the Army, especially the ones that affect those that are in military service and the measures adopted to prevent and investigate these occurrences.

19. As indicated above, according to COMISEDH's records at a national level, approximately 20.6% of torture cases have been committed by members of the Armed Forces, principally of the Peruvian Army, against personnel that was carrying out military service. Approximately 19.4% of these cases are still in the stage of Preliminary Investigation at the Public Prosecutor's Office.

Please indicate if there has been established at the Public Prosecutor's Office a national register of all the denunciations received of persons that state that they have been victims of torture, cruel, inhuman or degrading treatment.

20. In paragraph number 45 of the State Report, mention is made of the System to Support the Prosecutors' Work (*Sistema de Apoyo al Trabajo Fiscal - SIATF*); and it is stated that this information is public and available on the website of the Public Prosecutor's Office. Nevertheless, after making enquiries, we must inform that SIATF cannot be accessed via the internet. Staff at the Public Prosecutor's Office told us, during a telephone enquiry made to the staff in charge of SIATF, that this system is for the internal use of the public prosecutor's offices and that information on a case could be obtained by personally requesting it at the reception desk of the public prosecutor's offices.

21. However, it must be reiterated that there is no national registry of denunciations of torture victims.

Please indicate what measures have been adopted to scrupulously respect, during the periods when a state of emergency was declared, (if there were any and the circumstances that led to them being declared) the obligations assumed by the State with regard to human rights.

22. The State Report, paragraph 57, makes reference to Legislative Decree No. 1095, which establishes the rules for the employment and use of force by the Armed Forces in the national territory. In this respect, it is necessary to point out that regarding Legislative Decree No. 1095, an action of unconstitutionality has been presented and whose resolution by the Constitutional Court is pending⁸. This is due to serious questioning of its content, as it makes possible the intervention of the Armed Forces in situations not authorized by the Political Constitution of Peru. Moreover, the ambiguity of the concepts, such as "hostile group", used in this Legislative Decree, places at risk rights such as participation and freedom of assembly and treats social protest like a criminal action.

23. Thus, the claim of unconstitutionality filed by 6,430 citizens before the Peruvian Constitutional Court on 19 December 2011 states the following:

In effect, article 3.f of L.D. No. 1095 gives as one of the characteristics of hostile groups, the possession of "large numbers of blunt force weapons", however, it does not specify what this means.

"f. Hostile group.- Plurality of individuals in the national territory that meet three conditions: a) They are minimally organized; b) They have the capacity and decision to confront the State, in a prolonged manner through the use of firearms, sharp or blunt force weapons in large numbers and c) They participate in the hostilities or collaborate in carrying them out" (the underlining was added by us)

The definition of "hostile group" is general and ambiguous, and entails a risk for the protection of the human rights of individuals considered members of a "hostile group", defined in such a vague way. This can be deduced from articles 4.1 and 5.1 of L.D. No. 1095 which establish the purpose and legal framework for the execution of military operations by the Armed Forces against hostile groups.

"Article 4.- Purpose of the intervention of the Armed Forces

[...]

4.1.- Confront a hostile group, conducting military operations, with a prior declaration of a State of Emergency, when the Armed Forces assume the control of domestic order". (The underlining was added by us)

"Article 5.- Determination of the applicable legal framework

[...]

5.1.- When the action of the Armed Forces during a State of Emergency is directed at conducting military operations to confront the capacity of a hostile group or member of one, the regulations of International Humanitarian Law apply". (The underlining was added by us)

It is disproportionate and dangerous that military operations against hostile groups are accepted, if it is not clear what is understood by hostile groups, and more specifically, what is understood by "blunt force weapons in large numbers". A broad and loose application of the term "blunt force weapons in large numbers" could end up by authorizing the conduction of military operations against students on strike carrying sticks and stones, against native peoples of the Amazon who carry out a protest march with bows and arrows at the gates of a mining camp. The danger of this definition is that it is "excessively broad" and could be applied to any social organization or group of individuals that participate in protests.

Furthermore, the participation of the Armed Forces through "military operations" in the repression of social protests may not only be provocative, but can lead to a violent reaction on the part of the participants on these protest marches, initially peaceful and protected by the Constitution, in accordance with article 2 paragraph 12 of the Constitution. Poor

⁸ See Annexe 1: Resolution of Constitutional Court of 3 May 2012 in file No. 00022-2011-PI/TC which admits the claim of unconstitutionality against Legislative Decrees 1094 and 1095.

legislative technique is definitely dangerous whenever it can end up being protected by an interpretation that can lead to the criminalization of social protest, on including the concept of "hostile group", which would in practice be applied to the claims made by citizens and their organizations.

24. Another matter of concern is the Draft Law approved in the National Congress, which regulates the use of force by the National Police. In this regard we must point out that on 18 June this year, 2012, the Congressional Commission on National Defence, Internal Order, Alternative Development and Drug Control [henceforth Defence Commission] passed by a majority an "Insistence opinion"⁹ of the autograph of the Law¹⁰, that regulates the use of force by members of the National Police of Peru (Draft Law 81/2011-CR), although it had been vetoed on by the President¹¹.

25. The draft legislation approved in the National Congress contains many very dangerous aspects which put citizens' human rights at risk and which the Defence Commission would be insisting on. The Draft Law authorizes the use of firearms not only to protect life or personal integrity, as established by international regulations¹², but extends it to cases in which personal freedom is put at risk, in such a way that if a road is blocked during a public demonstration, preventing drivers from using it, their freedom would be deemed to be affected and the police would be authorized to use their firearms. Similarly, if workers occupy a company or public entity and do not allow people to enter or leave, they would be affecting their freedom and in that case the police could use their firearms. Another matter of concern is that it establishes a general clause of exemption of criminal responsibility by providing that: "The action of the member of the police that made use of lethal force in accordance with this law is not criminally punishable" (article 7.b.3 paragraph in fine in the text of the draft law approved in the Insistence opinion), with which there is a clear trend towards impunity, in contravention of international norms. Another reason for concern is the regulation established by the Draft Law, contrary to international norms, on the

⁹ Congressional Commission on National Defence, Internal Order, Alternative Development and Drug Control; Decision on the observations to the autograph of the Draft Law 81/2011-CR, Law which regulates the use of force by members of the National Police of Peru, of 18 June 2012.

¹⁰ The Autograph of the Law is the text of a legal provision approved by Congress, either in Plenary Session or in the Permanent Commission, and which is sent to the President of the Republic to be enacted.

¹¹ See, Official Communication No. 123-2012-PR of 29 May 2012, signed by the President of the Republic, Ollanta Humala, and the President of the Council of Ministers, Oscar Valdés.

¹² The international norms that regulate the use of force by members of the police force are: the "Code of Conduct for Law Enforcement Officials" (adopted by General Assembly Resolution 34/169 of 17 December 1979) and the "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials" (adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, celebrated in Havana - Cuba - between 27 August and 7 September 1990). These international norms have been progressively incorporated into our domestic regulations and thus we have: the *Law of the National Police of Peru* (Law No. N° 27238), which stipulates the observance of the Code of Conduct specifying that the "members of the National Police of Peru in the exercise of their functions, shall observe and shall be subject to the principles of the Code of Conduct for Law enforcement Officials" (article 10); the *Regulation of the Law of the National Police of Peru* (approved by Supreme Decree No. 008-2000-IN) which incorporates a chapter dedicated to the Code of Conduct (Chapter II of the Regulation) indicating that the "Members of the National Police, in the exercise of their duties will respect the Human Rights and fundamental liberties of the person [...] in accordance with the principles of the Code of Conduct for Law enforcement Officials" (article 12, first paragraph), even specifying that "non observance will be punished in accordance with the institutional legal and regulatory provisions" (article 12, paragraph in fine); and the *Law on the Disciplinary Regime of the National Police of Peru* (Law No. 28857), which establishes that one of the obligations of police members is to "Respect and put into practice the principles contained in the Code of Conduct for Law enforcement Officials" (article 66, section 7) and the *Human Rights Manual applied to Police Work*, approved through Ministerial Resolution No. 1452-2006-IN, which is based on the Code of Conduct and the Basic Principles, expressly stating that "those which must be observed in all circumstances, with no possibility of invoking exceptional or public emergency situations to justify their infringement". The Constitutional Court has also indicated that the National Congress, in order to pass a law on the use of force "should be based on the United Nations Principles for the use of lethal force" (Sentence of the Constitutional Court in File No. 00002-2008-PI/TC, of 9 September 2009, legal basis No. 64), specifying in the operative part that the "Constitutional Court considers that regarding the use of force by the Armed Forces, and resorting to an appeal ruling, it must restrict itself to the principle recognized by the United Nations and established in Legal Basis No. 64 of this ruling" (Operative Paragraph No. 9).

warning to be provided before a firearm is going to be used. The norm approved in Congress does not include that prior warning should be given before using a firearm.

ARTICLE 4

- | |
|---|
| <ol style="list-style-type: none">1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature. |
|---|

Please inform the Committee if on defining the acts prohibited in the Convention, the legislation that prohibits torture and other cruel, inhuman or degrading treatment or punishment takes into account a gender perspective and if it includes sexual violence.

26. The Peruvian legislation that regulates torture does not incorporate a gender perspective and does not include sexual violence as a type of offence.

27. The Peruvian State refers to the presentation of a legislative initiative in the National Congress, Draft Law No. Nº 1707/2007/CR, which has the purpose of implementing the Rome Statute of the International Criminal Court in our national legislation, which includes rape as a crime against humanity in the context of a systematic or generalized plan.

28. In this respect, we should point out that this draft law was not approved in the National Congress as it was a draft law presented during the 2006-2011 legislative session. When this legislative session ended without it being approved, it was automatically shelved, and there is currently no draft law on the subject awaiting approval in Congress.

29. Other cases not contemplated in the Peruvian criminal legislation include the participation of other moral or legal persons, such as companies, in the alleged commission of torture or other cruel, inhuman or degrading treatment. One of these cases concerns the Monterrico/Majaz mining company in the highlands of Piura (Northern Peru), in whose premises members of the police and private security of the mining company detained a number of male and female peasants that were protesting against the mine. They were subjected to acts of torture, including sexual molestations, events that occurred in 2005. Criminal proceedings are ongoing against members of the police, but the managers or employees of the company have not been investigated or charged, and even less so the company as such. Peru lacks legislation that permits criminal offences to be attributed to moral or legal persons such as companies and their staff. This case is being advocated by the Ecumenical Foundation for Development and Peace (Fundación Ecuménica para el Desarrollo y la Paz – FEDEPAZ).

ARTICLE 10

- | |
|--|
| <ol style="list-style-type: none">1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons. |
|--|

Please indicate the measures that the State Party has adopted to extend training programmes dealing with the obligations imposed by the Convention for police, army and prison officials and for prosecutors, particularly as regard the correct classification of cases of torture.

30. In paragraph 94 of its Report, the Peruvian State indicates that thanks to the agreement signed with the International Committee of the Red Cross, almost 300 police instructors have received training in human rights, over 20 decentralized training workshops have been carried out at a national level and the "Guidelines and Handbook for Police Personnel that participate in Operations of Maintenance and Reestablishment of Public order" was approved by Vice-Ministerial Resolution No. 033-2009—IN/0103.1.30

31. As part of civil society, we support this initiative but consider that it is not sufficient to just provide training. The State should also specify what has happened with the 300 police instructors and what functions they are carrying out. The State should also indicate the extent to which trainings have been replicated and what are the achievements in this regard.

32. The State Report (paragraph 95) also mentions the creation of a "Registry of Police Observers on United Nations Peacekeeping Missions and Police Instructors in International Humanitarian Law and International Human Rights Law applied to Police Functions", whose purpose would be to have updated information on police instructors in International Humanitarian Law and International Human Rights Law. In this regard, the State only mentions that this registry has been created but does not provide any information with respect to its implementation, use, or how it is functioning. Although it is true that the creation of this registry represents progress, it is necessary to know in what way it is useful for society.

33. The Peruvian State Report (paragraph 106), indicates the participation of members of the Public Prosecutor's Office, both Senior Prosecutors, Provincial Prosecutors, Deputy Provincial Prosecutors as well as administrative staff in seminars, training workshops, congresses and other events on human rights violations, all this with the purpose of contributing to the process of professional improvement in order for prosecutors' duties to be performed better.

34. Although the pre-trial investigation stage in criminal proceedings is carried out by the Public Prosecutor's Office, the judges also play an important role as they are in charge of judging grave human rights violations.

35. The Peruvian State does not mention the training of judges and magistrates of the Judiciary regarding human rights violations, this training being of fundamental importance to their position. There are clear examples of a lack of training of judges on the issue of human rights, one of them being what happened to "J.Z.B." who was tortured at the *Comisaría de La Pascana* Police Station in Lima. Here the Supreme Court acquitted the accused and based its ruling on the following argument¹³:

"Concerning the crime of torture established in article 321 of the Criminal Code, for which he has been convicted (...), it should be noted that the [lower] Chamber is mistaken in its appreciation, as this offence concerns 'crimes against humanity', and therefore for it to take place, in addition to the objective elements, it is necessary to consider, as a political criminal criterion, that it is an international crime that is committed in a political context of conflict, as defined in article four, section two of the International Covenant on Civil and Political Rights" (unofficial translation, the underlining was added) (See annexe 2)

36. The judgement therefore distorts the essence of the crime of torture in our criminal legislation, introducing in the offence, an element that is not required, that of having to be "committed in a political context of conflict", which would question the existence of a large number of torture cases.

37. This type of judicial decision, added to the other mechanisms for impunity leave the victims in a helpless situation, in which they have great difficulty in accessing justice.

ARTICLE 11

¹³ Fourth recital of Supreme Court Ruling No. Nº 1776-2008 of 1 September 2008

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Please describe the procedures in force to guarantee the observance of article 11 of the Convention and provide information on rules, instructions, methods and practices as well as new arrangements regarding the deprivation of liberty that have been adopted. Likewise, please indicate the frequency with which they are reviewed.

38. Concerning what the Peruvian State has achieved in relation to article 11, we should note that despite the existence of laws and rules with respect to the rights of persons deprived of liberty, the problem arises in the lack of implementation of these rules. Therefore, the human rights of persons deprived of liberty continue to be violated.

39. An example is what happened on 21 June 2012, when at night, two dozen police from Police Station No. 1 of Cajamarca beat the lawyer Amparo Abanto of the National Coordinator of Human Rights—specifically of GRUFIDES (Sustainable Development Training and Action Group)—, and the Commissioner of the Ombudsman’s Office, Genoveva Gómez, resulting in serious bruising. The Commissioner Genoveva Gómez Vargas, with the proper identification credentials of the Ombudsman’s Office and wearing the institution’s distinctive waistcoat, together with the lawyer Amparo Abanto entered the State Security office (Police Station No. 1) in Cajamarca, as it was known that people had been detained, and were presumably being beaten inside this police station.

40. Once inside the two young lawyers went to the area where the detained people were being held, where they saw people on the floor and heard the detained being beaten inside the room. Gómez and Abanto, together with a representative of the Bar Association, tried to prevent the police from continuing to beat them, which at that moment led to the two lawyers being dragged by the hair, beaten and ill-treated by police inside the police station until they were thrown out of the premises.

41. In the face of these events, the lawyers and the commissioner of the Ombudsman’s Office, Agustín Cavero, went to Police Colonel Gonzales to make a complaint about the attacks. The officer blamed them for the events and immediately afterwards protested that they were not wearing the “waistcoats” of the National Coordinator of Human Rights (the commissioner was wearing the Ombudsman’s Office waistcoat), as if this omission justified their being beaten in this way. This practice of blaming the victims is used repeatedly, and particularly in the cases of women victims. Evidently this prejudice persisted in a situation involving two women officials that inquired into the situation of detained people.

42. These events have been denounced by both the National Coordinator of Human Rights¹⁴ and the Ombudsman’s Office.¹⁵

43. Reference can also be made to the case of the detention of the Priest Marco Arana, an environmental leader, who on 4 July 2012 was beaten by the police security forces in the city of Cajamarca. Marco Arana was sitting on a bench in the main square (*Plaza de Armas*) of Cajamarca when approximately 40 officers of the National Police of Peru attacked him violently, hitting different parts of his body. After this, they took him to the police station, where they beat him again.

¹⁴ National Coordinator of Human Rights. Statement of 1 July 2012. <http://derechoshumanos.pe/2012/07/cnddhh-exige-investigacion-ante-golpiza-de-policias-a-abogadas-encajamarca/>.

¹⁵ The Ombudsman’s Office of Peru, Official Communication No. 0632-2012-DP of 22 June, 2012 (See Annexe 3).

44. In his twitter account the environmental leader stated: "They detained me, they beat me violently, inside the police station they beat me again, fists on my face, kidneys, insults" (sic),¹⁶ clearly showing what he had to go through.

45. Mirtha Vásquez, Marco Arana's lawyer, confirmed¹⁷ that her client will file a complaint against the police officers that brutally attacked him, for the crime of torture, abuse of authority and arbitrary detention when he was being taken to Police Station No. 1 in Cajamarca.

Please indicate what measures have been adopted to reduce overcrowding in the prisons, the priority given to improve the access of those deprived of liberty to medical professionals and legal aid lawyers. Please indicate the number of legal aid lawyers provided by the public defence as well as the number of doctors that attend to the prison population in each prison.

46. Paragraph 132 of the State Report refers to the implementation of a system of electronic vigilance with the aim of reducing overcrowding in prisons. However, this vigilance system has not yet been implemented, and there are no known cases in which this system has been put into operation.

47. On the contrary, the Peruvian State has adopted measures that are leading to even greater overcrowding in the prisons. In fact, certain rules of procedure have been amended, such as those corresponding arrest warrants. The previous Code of Criminal Procedures ordered that the arrest warrant be made effective for those who complied with certain requirements, including that the *punishment to be imposed should be greater than four years of deprivation of liberty*. This requirement was amended reducing the period to one year of deprivation of liberty.

48. Article 135 of the Code of Criminal Procedures originally stated that:

"Article 135.- *The Judge can issue an arrest warrant if after considering the evidence submitted by the Provincial Prosecutor it is possible to establish:*

1. That there is sufficient probatory evidence of the crime that links the defendant as perpetrator or as participant.

The condition of being member of the board of directors, manager, member, share-holder, director or associate at the time the alleged offence was committed in the context of the exercise of an activity carried out by a private juridical person cannot be considered to constitute sufficient probatory evidence. .

2. That the punishment to be imposed be greater than four years of deprivation of liberty; and

3. That there is sufficient evidence to conclude that the defendant intends to flee or somehow obstruct the investigation. The punishment stipulated in the Law for the crime he is accused of does not constitute sufficient criterion to establish the intention of fleeing justice. ". (The underlining was added by us)

Paragraph 2 was later amended by Article 4 of Law No. 28726, published on 9 May 2006, and the text of the article reads as follows: "2. That the punishment to be imposed or the sum of punishments be greater than one year of deprivation of liberty or that there is sufficient evidence that the defendant habitually engages in the offence."

¹⁶ National Coordinator of Human Rights. Statement of 4 July 2012.

<http://derechoshumanos.pe/2012/07/cnddhh-exige-inmediata-libertad-de-marco-arana/>

¹⁷ Diario16. Lima, 16 July 2012. <http://diario16.pe/noticia/17467-marco-arana-denunciaraa-por-torturaa-policaias-que-lo-agredieron-en-cajamarca>

"Article 135.- *The Judge can issue an arrest warrant if after considering the evidence submitted by the Provincial Prosecutor it is possible to establish:*

1. That there is sufficient probatory evidence of the crime that links the defendant as perpetrator or as participant.

The condition of being member of the board of directors, manager, member, share-holder, or associate when the alleged offence has been committed during the exercise of an activity carried out by a legal person of private law.

2. That the punishment to be imposed or the sum of punishments be greater than one year of deprivation of liberty or that there is sufficient evidence that the defendant habitually engages in the offence, and

3. That there is sufficient evidence to conclude that the defendant intends to flee or somehow obstruct the investigation. The punishment stipulated in the Law for the crime he is accused of does not constitute sufficient criterion to establish the intention of fleeing justice. " (The underlining was added by us)

49. Other factors that have created greater overcrowding in Penitentiary Establishments is the increase in criminal laws carrying custodial sentences and limiting penitentiary benefits. Thus, the Ombudsman's Office has stated in Ombudsman's Report No. 154-2011/DP, "The Penitentiary System: Key component of security and criminal policy. Problems, challenges and perspectives", of October 2011, that:

"During this period the **criminal policy** has been marked by the issuing of a significant number of regulations having the force of law, which have modified criminal legislation regarding substantive aspects (29 provisions that have reformed 125 articles of the Criminal Code), procedural (13 rules) and execution (4 rules), which has a bearing on the increase of punishments or the creation of new elements (or the creation of new aggravating circumstances), the decrease of procedural rights and the limitation of penitentiary benefits. This has had the effect of increasing the prison population"¹⁸.

50. In addition, in 2012, Law No 29881¹⁹ came into force, which amended articles of the Criminal Enforcement Code relating to penitentiary benefits, making the requirements and procedures for requesting penitentiary benefits more rigid.

51. The above-mentioned is one of the reasons why there has been an increase in the prison population in Peru, which currently has 100% overpopulation. This is acknowledged in the official document of the president of the National Penitentiary Institute (INPE)²⁰ of April 2012, which shows how the prison population has increased over the last few years and also demonstrates the small number of employees the INPE has to attend to this population. This can be seen in the charts below.

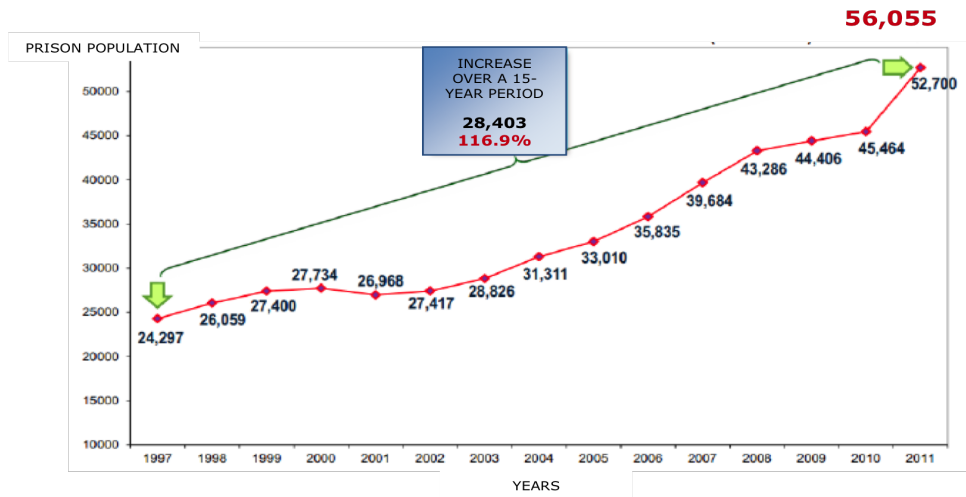
¹⁸ See Ombudsman's Office, Programme for Criminal and Prison Affairs, Office for Human Rights and Persons with Disability, Ombudsman's Report No. 154-2011/DP "The Penitentiary System: Key component of security and criminal policy. Problems, challenges and perspectives" Lima, October 2011, p. 210-211.

¹⁹ Published in *Normas Legales del Diario Oficial El Peruano* on 7 June 2012

²⁰ National Penitentiary Institute (INPE). *Problemática Penitenciaria*. Lima 13 April 2012.

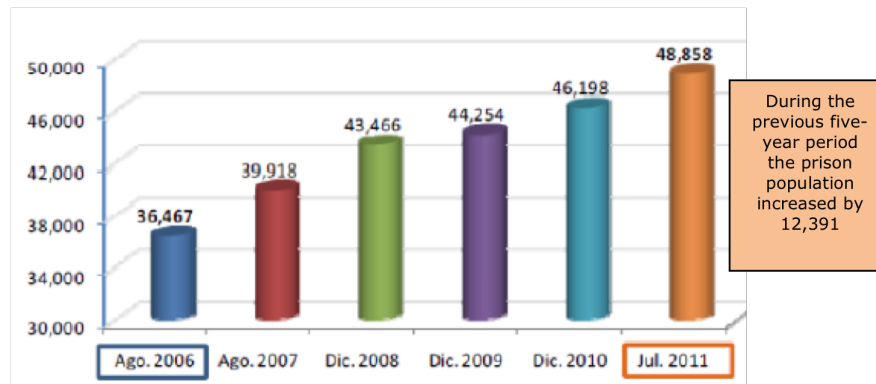
http://www.inpe.gob.pe/pdf/inpe_resumido.pdf

Figure 1: Increase in Prison Population 1997-2011²¹



Source: INPE Informative Report (12 April 2012)

Figure 2: The Prison Population August 2006 - July 2011²²



²¹ Instituto Nacional Penitenciario (INPE). *Problemática Penitenciaria*. Lima 13 April 2012, P. 3. http://www.inpe.gob.pe/pdf/inpe_resumido.pdf

²² Instituto Nacional Penitenciario (INPE). *Problemática Penitenciaria*. Lima 13 April 2012, P. 4. http://www.inpe.gob.pe/pdf/inpe_resumido.pdf. See Annexe 4.

Figure 3: Prison Overcrowding²³

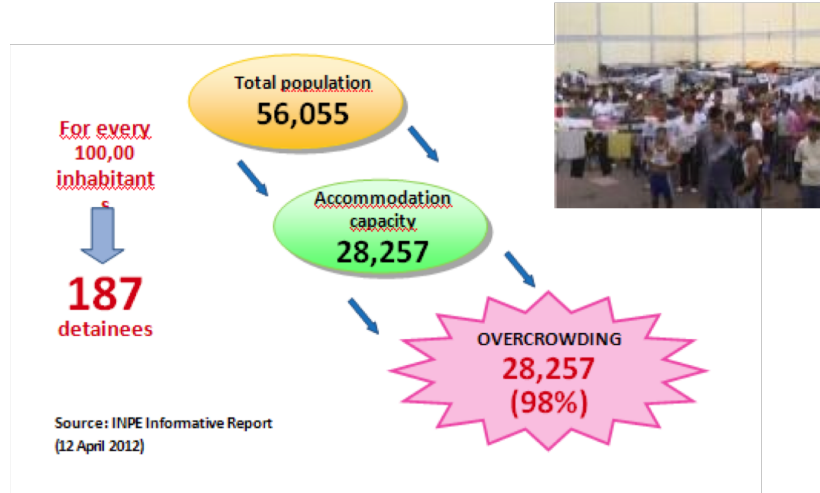
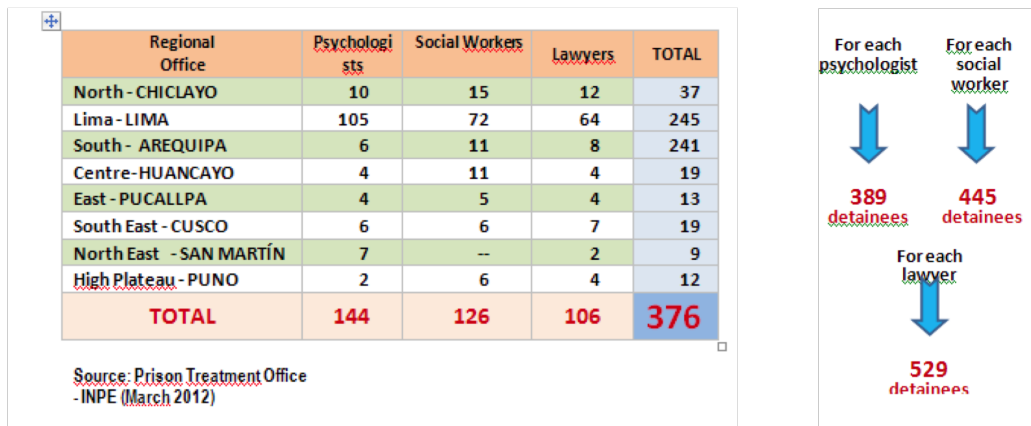


Figure 4: Treatment Staff at a National Level²⁴



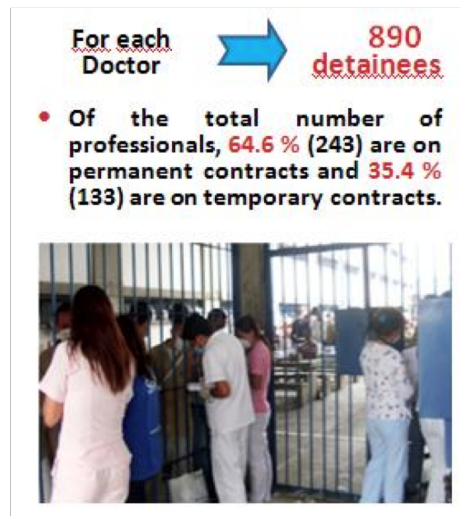
²³ Instituto Nacional Penitenciario (INPE). *Problemática Penitenciaria*. Lima 13 April 2012, P. 6 http://www.inpe.gob.pe/pdf/inpe_resumido.pdf

²⁴ Instituto Nacional Penitenciario (INPE). *Problemática Penitenciaria*. Lima 13 April 2012, P. 11. http://www.inpe.gob.pe/pdf/inpe_resumido.pdf

Figure 5: Healthcare professionals at national level²⁵

PROFESSION	No.
Doctors	63
Dentists	30
Nurses	16
Obstetricians	6
Biologists	1
Technologists	15
Nutritionists	2
Pharmaceutical-chemical Staff	5
Laboratory Technicians	6
Nursing Technicians	202
Radiology Technicians	2
TOTAL	376

Source: Penitentiary Health Sub Office
- INPE (March 2012)



Please indicate if Yanamayo prison has been closed and if this is not the case, why not?

52. As is indicated in the State Report, this prison is currently functioning in spite of the many recommendations to close it.

53. Likewise, Challapalca Penitentiary Establishment, whose closure has also been recommended, is still functioning. The Inter-American Commission on Human Rights, in its Special Report on the Human Rights Situation at the Challapalca Prison, department of Tacna, Republic of Peru stated:

(...) 4. In its on-site visit, the Inter-American Commission visited the Challapalca Prison, which is a penitentiary situated more than 4,600 meters above sea level, between the departments of Tacna and Puno, in the Andean Cordillera, near Peru's border with Bolivia. In that same report, the Commission noted:

(...) some prisons, such as those at Challapalca and Yanamayo, are in totally inhospitable places, both cold and geographically isolated. This makes it very difficult, in practice, for relatives to visit, because of the distance and other related obstacles. In addition, the conditions of detention of many detainees are excessively severe, as they are practically not allowed to spend time in the yard nor to do physical exercise.

²⁵ National Penitentiary Institute (INPE). Penitentiary problems. Lima 13 April 2012, p. 12. http://www.inpe.gob.pe/pdf/inpe_resumido.pdf

5. As regards the extreme conditions of detention in that prison, the Commission recommended to the Peruvian State that "the prisons at Challapalca and Yanamayo be deemed unfit to serve that purpose, and that the personnel detained at those prisons be transferred to other prisons."²⁶

54. It is widely known in Peru that the situation of prisoners in the Challapalca prison is very critical. On 19 February 2012, 17 detainees escaped at about two in the morning. The detainees took the security agents of the National Penitentiary Institute (INPE) hostage, injuring three of them, after which they fled in two vehicles that were waiting for them near the prison. The group of prisoners managed to seize 6 firearms. They left the premises dressed in the uniforms of the INPE employees. As the prison is located near the border between Puno and Tacna, it was thought that the detainees could escape to Bolivia.

55. The employees at the prison denounced the terrible security conditions and the lack of personnel. The employees Oscar Ramírez and Javier Miranda reported that an employee had to walk for almost three hours, at 25 degrees below zero, to reach the nearest village in order to report the escape and ask the authorities for help. José Luis Pérez Guadalupe, head of the INPE, recognized that the lack of personnel may have caused this escape from the prison, where there are 129 detainees. He indicated that only 13 prison officials, working in shifts, provide security.²⁷

56. Two days later, the 17 fugitives were recaptured, according to information provided by the police, who also stated that of the 17 detainees, one had in fact died due to the inclement climate. Mr. José Karol Albitres Maceda apparently died of hypothermia due to the low temperatures recorded in the Peruvian-Bolivian high plateau or as a result of a heart attack caused by the altitude.

57. In view of the critical situation of both INPE personnel as well as the detainees, it is urgent that the Peruvian State should adopt measures regarding the Challapalca prison.

Please report what measures have been adopted in the small prisons in the judicial power and in the National Police offices to supervise the proper intervention of the officials in charge of the custody of those deprived of liberty and their access to the forensic medical service.

58. Regarding the situation of the small prisons and the proper intervention of the officials in charge of the custody of those deprived of their liberty presented in the State Report, there is information concerning cases of torture and ill-treatment in these small prisons as well as in detention centres not permitted to function as such. This occurred in the context of protests on the part of the population of the Province of Espinar (Cusco region), on 28 May 2012, when a team from the *Vicaría de Solidaridad* of Sicuani (a human rights organisation linked to the Catholic church), made up by Maritza Quispe Mamani (lawyer), Wilmer Quiroz Calli (lawyer), Jaime Cesar Borda Pari (Coordinator of the Area *Cuidado de los Bienes de la Creación*) and Romualdo Tito Pinto (driver), were calling on the people to free Prosecutor Héctor Herrera, who was being detained by them. Once the Prosecutor Herrera had been freed, he requested the support of the *Vicaría* to verify the existence of detained persons in the Tintaya Marquiri and Antapacay mining camps, who were possibly being ill-treated. In these circumstances the Prosecutor Héctor Herrera, together with the members of the *Vicaría* and Mr Sergio Huamaní, (Vice-president of the United Front for Defense of Espinar Interests - *Frente Único de Defensa de los Intereses de Espinar* -FUDIE-) went to the mining camps in the *Vicaría's* van.

59. The committee, made up by the Prosecutor Héctor Herrera, together with the team from the *Vicaría de Sicuani* and the leader Sergio Huamaní, went to the Tintaya Marquiri Mining Camp, where the Captain of the National Police, under the surname of Palomino, indicated that only the

²⁶ Inter-American Commission on Human Rights. Special Report on the Human Rights Situation at the Challapalca Prison, department of Tacna, Republic of Peru. 9 October 2003.

²⁷ Perú21.pe. Published on 20 February 2012. <http://peru21.pe/2012/02/20/impresadiecisiete-peligrososinternos-fugan-penal-challapalca-2012561>

Prosecutor and the lawyers of the *Vicaría* could enter the mining company, with Jaime César Borda Pari, Romualdo Ttito Pinto and Sergio Huamaní staying outside the offices and in the van.

60. While the detained in the Tintaya Marquiri mining camp were being registered, one of the *Vicaría de Sicuani* lawyers (Wilmer Quiroz) received a call saying that there were three more people detained inside. He decided to see who they were and was surprised to see that the detained were Sergio Huamaní, Jaime César Borda Pari and Romualdo Ttito Pinto.

61. The lawyer Wilmer Quiroz found Sergio Huamaní seated on a chair, in a bloodstained jacket and with rumpled hair. Mr Huamaní showed the *Vicaría* lawyer a handful of his hair.

62. From the statements given by Jaime César Borda Pari and Romualdo Ttito Pinto, it is known that while they were waiting outside the camp, a group of 30 police officers of the National Office of Special Operations (*Dirección Nacional de Operaciones Especiales* - DINOES) approached them and pointed at them with firearms, beat and insulted them and forced them to get out of the van. During this detention period they were taken into the Tintaya Marquiri mining camp and forced to hand over the keys to the van to the police.²⁸

63. It was later discovered that the Police had made a record of the proceedings stating that inside the vehicle of the *Vicaría de Solidaridad*, 10 bullets from firearms had allegedly been found under the back seat of the vehicle. Jaime Borda and Romualdo Ttito did not sign this record because the police were in possession of the keys to the van at the time, leaving open the possibility that the police could have placed them there.

Please indicate the policies and rules on the use of isolation and the principal reasons for its use.

64. Paragraph 146 of the State Report indicates that civilian prisoners deemed highly dangerous, indicted or sentenced, are detained in the Maximum Security Prison of Callao (*Centro de Reclusión de Máxima Seguridad del Callao* - CEREC) and are under Supreme Decree No. 024-2001-JUS, Regulation for the Maximum Security Prison at the Navy Base in Callao.

65. It is necessary to point out that this resolution has been amended by Supreme Decree No. 010-2012-JUS of April 2012, which establishes that **any prisoner that has committed extremely grave crimes and that is under any closed prison regime** may also be taken to the Navy Base when there are security reasons for this; the decision being left to the absolute discretion of the authority.

66. The above-mentioned Decree thus provides for **the addition of a second paragraph to article 1 of the original regulation**, with the following:

"The president of the Technical Committee of Cerec can decide on the entry or leaving, temporary or permanent, from the prison, of those indicted or sentenced referred to in the paragraph above, as well as of other prisoners that have committed extremely grave crimes that are under any closed prison regime and where there are security reasons".

67. In addition, articles **5, 12, 15, 23, 36 and 41 of the previous regulation have been amended. Among other aspects, it is established that** telephone calls can only be made to the immediate family members of the prisoner that are abroad **with a frequency of once a month**, with the prisoner having to pay the cost of each call. The prisoners can be visited by their lawyers and any other person after approval has been granted by the **CEREC Technical Committee**.

ARTICLE 13

²⁸ Statement: On the events that occurred in Espinar, Cusco- Perú. Jaime Cesar Borda Pari / Vicaría de Solidaridad de la Prelatura de Sicuani.

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Please provide information on the measures adopted to guarantee the protection of all persons that denounce acts of torture or ill-treatment, against intimidation or reprisals. Likewise, please provide information on the establishment of an adequate mechanism to protect the witnesses and victims and the institution in charge and the qualities of the officials that form part of it.

68. The Report of the Peruvian State (paragraph 156) states that the Comprehensive Programme for the Protection of witnesses, experts, victims and collaborators in the investigations and criminal proceedings (through Supreme Decree No. 003-2010-JUS) has started operating. While it is true that this programme has been implemented, no specific measure has been adopted for crimes such as torture or other grave human rights violations. The measures given in the rule are general and apply to any type of criminal offence.

69. Paradoxically, the largest numbers of torture cases are committed by police personnel; precisely those that have the duty to provide security to the victims that make use of the protection programme.

ARTICLE 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Please provide information on the progress made in the implementation of the recommendations of the Truth and Reconciliation Commission Report, particularly those related to vulnerable groups. Likewise, please indicate the progress made in the implementation of the Comprehensive Reparations Plan and what resources have been provided in this respect.

National Human Rights Plan

70. With regard to the National Human Rights Plan (PNDH), it is only an instrument of national policy in which the necessary measures are established to formulate the promotion and protection of human rights in a more efficient way. Unfortunately, this instrument has not been assumed as a compulsory norm. It is therefore urgent to make them into compulsory norms, which require compliance with the guidelines given regarding human rights protection.

Subsystem of courts specialized in human rights

71. It is stated that a judicial subsystem specialized in human rights (paragraph 160 of the State Report) has been created. While it is true that this subsystem exists and has jurisdiction over crimes against humanity and common crimes that constitute cases of human rights violations, this only applies within the jurisdiction of the Superior (High) Courts in each of the judicial districts and

not the Supreme Court nation-wide. It thus happens that when a sentence passed by the Criminal Chamber of a Superior Court is appealed to the Supreme Court, it is sent to its ordinary criminal chamber. This has meant that in the last few years, cases have resulted in impunity for the perpetrators. An example of this is the Barrios Altos case, in which 15 people were assassinated and four others severely injured by a military command called "Grupo Colina."²⁹ The Permanent Criminal Chamber of the Supreme Court, in a sentence issued on 20 July 2012, classified the crimes as common crimes and not crimes against humanity, reducing the sentences and declaring that some of the prosecution of some of the crimes -such as joint criminal enterprise or conspiracy- was time-barred. This controversial Supreme Court ruling prompted a recent resolution (of 7 September 2012) by the Inter-American Court of Human Rights stating that the Supreme Court ruling is incompatible with the commitments made by Peru on ratifying the American Convention on Human Rights. They also noted that if that situation is not rectified, there would be serious obstacles for the achievement of the reparation measure ordered by the Inter-American Court, concerning the duty to investigate the facts of the Barrios Altos case. The Court also resolved that the State of Peru must present, by 20 January 2013 at the latest, a report indicating all the measures adopted to comply with the reparations ordered by the Court.

The Institute of Forensic Medicine and Forensic Anthropological Investigations

72. The State Report (paragraph 165) indicates that the Institute of Forensic Medicine (IML) has been strengthened in the areas of the search for disappeared persons and exhumations. In this regard we should point out that in the last few years the work carried out by the IML has been very poor: the victims' relatives have had to bear the burden of their pain for enormous periods of time, to the extent that there are cases in which, over 20 years after the events and after the remains have been found, the IML has still not carried out the corresponding analyses to obtain the profiles of the victims and the information on how they were executed. Similarly, there are significant difficulties with respect to the process of searching for the disappeared. As one example, there is the case of Santiago Antezana³⁰, who disappeared in 1984 in the region of Huancavelica annexe of Manyacc, and to this day, over 26 years since the events, there are neither signs of his whereabouts nor any information regarding any search for him.

73. In paragraph 167 of the State Report, reference is made to Law No 27378 which establishes the general protection measures applicable to those who, as collaborators, witnesses, experts or victims, intervene in criminal proceedings. With the aim of rectifying some of the problems in this law, Draft Law No. 175/2006-CR was presented before the National Congress during the 2006-2011 session. However, as this legislative initiative was not passed during the legislative session it was shelved. Currently there is no new Draft Law on this issue in Congress.

74. With regard to the Forensic Anthropological Investigations Plan (paragraph 169 of the State Report), it must be clearly stated that this plan is not at present publicly known and neither is there any information on its implementation.

75. The Peruvian State reported at the beginning of 2012, before the Organization of American States (OAS), in a document named "*Persons who have disappeared and assistance to members of families*", that the Institute of Forensic Medicine (IML) and the Specialized Team of Forensic Anthropology (EFE) have formulated a proposal for a National Plan of Anthropological-Forensic (PNIAF). But in the same document it is acknowledged that there is no National Plan in execution.

76. The head of the human rights investigations team at the Ombudsman's Office, César Cárdenas, maintains that his institution has repeatedly requested the IML to send them their plan, but the reply has always been a programme on procedures and exhumations. The official³¹ points out that: "The Public Prosecutor's Office has considered that after the Truth and Reconciliation Commission it could continue to carry out the forensic work from its point of view and alone.

²⁹ See Justicia Viva. The sentence of the Barrios Altos case: the new instrument for impunity. 26 July 2012. <http://www.justiciaviva.org.pe/notihome/notihome01.php?noti=855>

³⁰ Information obtained from the Comisión de Derechos Humanos (COMISEDH) database of victims and cases.

³¹ COMISEDH; *Los Muertos de Ayacucho, Violencia y sitios de entierro clandestinos*. Lima, 2012, p.37.

Autonomy carries great weight for this institution". Cárdenas considers that the problem with this way of working is the lack of planning to deal with cases that cannot be dealt with as if they were recently committed crimes.

77. The Institute of Forensic Medicine is carrying out a large-scale intervention to locate the sites, verify the existence of victims, exhume and analyze the bodies. In this procedure, only one method is implemented to carry out the forensic investigation. This method involves filling in *antemortem* records which contains information regarding the physical characteristics of the victim, the analysis of the context, access to the place where the burial sites are located and other details which may lead to the next step. The next step is the exhumation of the remains that are located in the same geographical area³². All this is done without an intervention plan or considering an updated mapping of burial sites.

78. To implement the PNIAF proposal there is a need of a set o logical and coordinated steps and conditions to avoid obstacles that may in the long run affect again the victims' relatives. The Truth and Reconciliation Commission recommended several steps which are still relevant today to formulate the plan: a) define the institutional work space, b) establish technical norms and tools, c) prepare the programmes and projects to obtain funding, d) develop and adapt the logistical infrastructure to have the proper human and material resources.

79. This planning and execution of concrete actions requires coordination between different State institutions and civil society. It also requires the approval of norms, measures and technical specifications in accordance with international standards and the experiences of other countries that went through similar situations. Only then will these postponed stories of the conflict, which do not permit Peru to consolidate its democratic life, be rescued from oblivion.³³

80. To this must be added that the IML has suffered from a severe lack in resources by the Peruvian State. At present it does not have the budget to carry out the necessary analyses, and will only receive funding at the beginning of 2013. The State must assume its responsibility in this situation, as the lack of information given by the IML regarding identification processes and the search for disappeared persons continues to lead to impunity.

The Military Police Criminal Code

81. An action on unconstitutionality has been filed in relation to Legislative Decree No. 1094 (paragraph 173 of the State Report), promulgated in August 2010, which approves the Military Police Criminal Code. This action was taken on the basis that certain offences are incorporated in the Code as service-related offences whereas the Constitutional Court in 2006 had declared that defining ordinary crimes as service-related offences was against the Constitution.

82. The inclusion of these offences (21 in total) as service-related offences in the Military Police Criminal Code is inconsistent with the Constitution and international norms for two reasons: (i) the right to a natural judge is violated because this norm authorizes the competence of judges that are not entitled to exercise powers as members of the military police jurisdiction, in so far as the competent jurisdiction is the ordinary court system; and (ii) because the government, on issuing these norms fails to comply with several Constitutional Court judgments such as those in file No. 0012-2006-PI-TC³⁴, file No. 02284-2007-HC/TC and file No. 0017-2003-AI/TC, regarding the concept of offence committed in the course of duty.

83. There are therefore offences that the Constitutional Court indicated should be under the competence of ordinary courts and which have instead been incorporated into the new Military Police Criminal Code. It is worth repeating that the Constitutional Court in its 15 December 2006

³² Details of this type of large-scale intervention were given in report No409-2011-JUS/PSS and in the document "*Persons who have disappeared and assistance to members of families*" that Peru presented to the OAS at the beginning of 2012.

³³ COMISEDH; *Los Muertos de Ayacucho, Violencia y sitios de entierro clandestinos*. Lima, 2012, p.37-38.

³⁴ Constitutional Court. Judgement of 15 December 2006, File No. 012/2006/PI/TC

judgement, file No 0012-2006-PI/TC³⁵, indicated a set of military and police offences that did not fit into the definition of an offence committed in the course of duty. These offences were declared unconstitutional and included offences against International Humanitarian Law.

Reparations

84. The Peruvian State expands on the issue of reparations in paragraphs 174 to 197 of the State Report. In this regard, it specifies that the Comprehensive Reparations Plan envisages different reparation programmes, both individual and collective. However, collective reparations were the main focus of the previous government, presided over by Alan García, through the High Level Multi-sectorial Commission (CMAN).

85. Although progress has been made in collective reparations, the Ombudsman's Office has advised that the CMAN "should adopt better control mechanisms to guarantee transparent management by the municipalities, as well as to ensure the timely compliance with their obligations and the follow-up on the proper functioning of the works"³⁶. In addition, taking into consideration the 5,609 population centres registered in Book 2 of the Unified Registry of Victims (RUV)³⁷, over three thousand population centres remain unattended.

86. Another observation made is that the CMAN Technical Secretariat focused the programme of collective reparations on two of the four categories envisaged in the regulation implementing the Law on the Comprehensive Reparations Plan (PIR), without giving an explanation for this measure³⁸.

87. Likewise, it has been indicated that although "there is widespread knowledge of the project in general terms, not everybody recognizes it as collective reparation or as a response to the effects of the political violence. This recognition has also increased in comparison to previous reports, but there are still problems in recognizing the reparatory nature of this policy. These actions have little symbolic value, and the dissemination activities and ceremonies to mark the start and delivery of works have not manage to communicate it well enough."³⁹

88. In terms of individual reparations, there has been a focus on health, provided for by the Comprehensive Health System (*Sistema Integral de Salud* - SIS). However, the system has been seriously questioned by victims due to the difficulties in its provision. Regarding this, the Ombudsman's Office has stated that "complaints are still being received about the inadequate attention to the victims of violence in the health centres, the lack of information public officials have with respect to the rules that regulate the benefits for the victims and the lack of SIS coverage regarding illnesses (physical and mental) resulting from the process of violence."⁴⁰

89. Concerning the programme of economic reparations, at the beginning of 2009 the Multi-sectorial Technical Commission in CMAN was established. However, it was not constituted due to formalities. It was only mid- 2010 that the decision was made to establish the Multi-sectorial Technical Commission in order to formulate a technical proposal, after strong advocacy by victims' organizations which carried out marches for this purpose. At this time, the representatives of civil

³⁵ Idem

³⁶ See, Ombudsman's Office, "*El proceso de reparaciones a favor de las víctimas de la violencia*", Lima, December 2009.

³⁷ The Central Register of Victims (*Registro Único de Víctimas*) is the state register of the victims affected during the period of the internal armed conflict which occurred in Peru between 1980 and 2000, and which may be beneficiaries of the reparations programme. The RUV has 2 registry books, the first for individual victims and the second for affected population centres.

³⁸ International Center for Transitional Justice -ICTJ, *Ejecución General del Programa de Reparaciones Colectivas*, 2011, p. 2.

³⁹ International Center for Transitional Justice -ICTJ, *Ejecución General del Programa de Reparaciones Colectivas*, 2011, p. 12.

⁴⁰ See Ombudsman's Office, "*El proceso de reparaciones a favor de las víctimas de la violencia*", Lima, December 2009. The Ombudsman's Office adds that "mental healthcare attention for the victims of violence also causes difficulties related to the lack of centres and professionals that offer the service, among others" (Idem).

society organizations, the National Coordinator of Human Rights and the National Association of NGOs formulated an initial proposal which was put forward in a CMAN session in July 2009.

90. At the end of the Alan García government, Supreme Decree No. 051-2011-PCM was issued, published on 16 June 2011, which stipulated that the “amount for economic reparations will stand at 10,000 new soles (\$3,843.20 USD [here and henceforth at the current exchange rate] for each victim of disappearance, person killed or victim of sexual violence or victim left with a disability” (article 3.1). It was established that the said amount would be distributed in the following way: “When the surviving spouse or domestic partner presents him or herself with other relatives of the disappeared or dead victims, 50% will correspond to the spouse or partner and the remaining 50% will be distributed in equal parts among the relatives” (article 3.2).

91. The Decree also states that the “process for the determination and identification of the beneficiaries of the Programme of Economic Reparations (...) will end on 31 December 2011, date on which it will be closed” (article 1).

92. The issuing of the above-mentioned norm has been severely criticized and questioned by the organizations of victims’ relatives and human rights organizations, which considered that the amount of money allocated was degrading and that the closure of the RUV discriminated against the beneficiaries of the programme of economic reparations.

93. When the new government took office, both the President of the Republic, Ollanta Humala, as well as his first ministerial cabinet, presided by Salomón Lerner, announced that one of the issues of interest to this government would be reparations for the victims of the violence.

94. In order to follow-up on this aspect, the CMAN executive secretary, Isabel Coral, proposed approaching the reparations process in a comprehensive way, i.e. not only implementing collective reparations, but all the programmes envisaged in the PIR law and its regulation. She also considered implementing other recommendations of the Truth and Reconciliation Commission (CVR) such as those that were related to institutional reforms and the anthropological forensic investigation. In addition to this, she stated that SD 051-2011-PCM would be amended increasing the individual economic reparation to 10 Tax Units (*Unidad Impositiva Tributaria* - UIT)⁴¹ and removing the time limit for the registry of victims, set at 31 December 2011, so that they may be eligible for economic reparations.

95. During the CMAN session No. 115, held on 10 November 2011, the proposal to amend the questioned Supreme Decree No. 051-2011-PCM was approved.

96. However, at the end of 2011 there was a cabinet change and the new premier, Oscar Valdez, did not include the subject of reparations in his presentation before Congress. Isabel Coral also resigned from the CMAN Executive Secretariat and a replacement was not appointed until 6 February 2012.

97. SD 051-2011-PCM has not yet been repealed, as a result of which the amount for the individual economic reparation programme continues to be up to 10,000 new soles per victim. Unfortunately, the RUV for the beneficiaries of the programme of individual economic reparation was closed on 31 December 2011.

98. Regarding the Reparations Council (*Consejo de Reparaciones* - CR) and the Central Register of Victims (RUV), there has generally been little government support for the CR work, especially during the previous Alan García government, which has been reflected, among other aspects, in the insufficient provision of resources granted for it to carry out its work, creating difficulties in the speed at which the victims could be registered.

99. Thus, we can see that during 2008 the CR “had to alter its annual planning due to the fact that its initial budget (S/. 2’378,258) amounted to only 32% of the funds requested for it to function (S/. 7’378,258). This resulted in a significant decrease in the objective expressed in the

⁴¹ In 2012 the Tax Unit was equivalent to 3,650 new soles. <http://www.sunat.gob.pe/indicestadas/uit.html>

number of cases registered by the end of the year."⁴² In view of this situation, the National Coordinator of Human Rights stated that the CR budget situation at the end of 2008 was so critical that it endangered its operational capacity, and identified three main problems related to the Register of Victims: "1) that its sustainability is not guaranteed, 2) that the process of accreditation is slow and its continuity is not guaranteed, 3) that there is no guarantee that the Central Register of Victims will be used by the State to grant individual reparations, especially financial compensation."⁴³

100. Regrettably, the situation did not change much in 2009 and the initial budget granted was approximately 26% of the sum requested. This difficult situation meant that in June 2009 the CR had to cut staff numbers by 30%, as was informed in the joint CMAN - CR session held on 5 June that year. For the third quarter of the year only 600,000 (\$230,420 USD) new soles were allocated which forced the CR to a further reduction in staff. On not receiving more financial resources it had to reduce its staff to a minimum and in the last two months of 2009 it only kept on 6 employees in order not to close down completely. In view of this situation, at the end of October 2009 the CR workers held a public conference expressing their concern about this situation.⁴⁴ The CR itself issued a Communiqué stating that, due to the critical situation it was going through, it was forced, as from 1 November 2009, to discontinue the evaluation and registration of cases pending in the RUV, with approximately 28,000 files still needing evaluation.

101. Neither was government support in 2010 very promising. The CR itself states in its Fourth Annual Report⁴⁵ that "When the period had only just begun, budget limitations forced the Reparations Council to do without almost all the Technical Secretariat staff, which meant suspending the work of evaluation and registration of cases in the RUV."⁴⁶ The CR added that: "Only as from October 2010 was it possible to complete the team in charge of evaluating files, due to the delay in the Presidency of the Council of Ministers in authorizing the hiring of our collaborators."⁴⁷

102. At the end of 2011, through Supreme Decree No. 102-2011-PCM, the CR was transferred from the Presidency of the Council of Ministers to the Ministry of Justice and Human Rights. It was a matter of concern that at the beginning of 2012 the Reparations Council's budget was cut which led to a reduction in staff and the closure of its decentralized office in Ayacucho,⁴⁸ although in the second quarter of 2012 this decentralized office was reopened.

Please indicate what type of attention – both medical and psychological, as well as rehabilitation– is available for victims of torture and other cruel, inhuman or degrading treatment. Please provide information on the attention provided by State institutions as well as activities carried out by non-government organizations. What State budget resources are allocated for this purpose?

103. The State indicates that it does not have a programme specialized in medical and psychological attention and rehabilitation for torture victims. As is mentioned in paragraph 214 of the State Report, COMISEDH is one of the civil society institutions that offers victims this comprehensive treatment.

⁴² National Coordinator of Human Rights, Annual Report 2008. The difficult path to citizenship, Lima, March 2009, p. 198. The National Coordinator, however, points out that the CR later received additional transferences from the Presidency of the Council of Ministers which enabled them to increase their institutional resources to S/. 4'488,958, that is, 61% of the amount requested. (idem).

⁴³ National Coordinator of Human Rights, Ob. Cit., p. 199.

⁴⁴ La República newspaper, "Cese del Consejo de Reparaciones es casi inminente por falta de presupuesto", web version of Tuesday 27 October 2009. <http://www.larepublica.pe/politica/27/10/2009/cese-del-consejo-dereparaciones-es-casi-inminente-por-falta-de-presupuesto>.

⁴⁵ Fourth Annual Report of the Reparations Council (October 2009 – October 2010). Lima, November 2010.

⁴⁶ Fourth Annual Report of the Reparations Council (October 2009 – October 2010). Lima, November 2010, p.

5.

⁴⁷ Idem.

⁴⁸ See Consejo de Reparaciones, Communiqué of 2 January 2012.

104. With reference to the above, it is necessary for the State to assume its responsibility and not delegate it to civil society organizations which make up for the State's absence in terms of the victims. It is the State's obligation to offer this treatment to victims of torture and other cruel, inhuman or degrading treatment or punishment.

ARTICLE 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Please indicate what measures have been taken to prevent, monitor, investigate and punish acts of sexual violence, specifically against women and girls, especially with regard to those deprived of their liberty.

105. The Peruvian State has an unfulfilled commitment with all victims of sexual violence. The current Criminal Code only regulates rape as a common crime.⁴⁹ It has not complied with adapting it in line with the Rome Statute of the International Criminal Court, in spite of having ratified it on 10 November 2010.

106. The current Criminal Code must be amended to reflect sexual violence as a crime against humanity as provided for in the Rome Statute of the International Criminal Court.

MISCELANEA

Please indicate if a national preventive mechanism has been set up and implemented to conduct regular visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment.

107. Since 1988 the Peruvian State has been party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol since 2006,⁵⁰ whose objective is to prevent all forms of torture. This Protocol establishes the obligation

⁴⁹ Peruvian Criminal Code. Article 170. - Rape: Any person who, by means of violence or grave threats, forces a person to have carnal access via the vagina, anus or mouth, or performs other similar acts by introducing objects or parts of the body into the vagina or anus shall be punished by a custodial penalty of not less than 6 and not more than 8 years. The penalty shall be not less than 12 and not more than 18 years' imprisonment and loss of legal capacity where appropriate in the following cases: 1.-If the rape is carried out under armed threat or by two or more individuals. 2.- If, in order to commit the offence, the person takes advantage of any position or rank giving him particular authority over the victim, or of a relationship of kinship to the victim, whether as an ascendant, a spouse or common-law partner of an ascendant, a descendant or a sibling by blood or adoption or similar, or of a relationships resulting from a contract to provide services, or of an employment relationship, or if the victim provides services to the person as a domestic worker .3.- If the rape is committed by a member of the Armed Forces, the national police, the civilian security service, the municipal police or private security services, in the exercise of their duties. 4. - If the perpetrator is aware that he is a carrier of a serious sexually transmitted disease. 5. - If the perpetrator is a teacher or teaching assistant at an educational establishment where the victim is studying.

⁵⁰ On 19 July 2006, National Congress approved the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment through Legislative Resolution

of the States to set up national bodies for the prevention of torture. Unfortunately, this National Preventive Mechanism (NPM) has not yet been set up, exceeding the time limit set for its implementation.⁵¹ Human rights non-government organizations which make up the National Coordinator of Human Rights Working Group against Torture (GTCT),⁵² have been promoting the implementation of the National Preventive Mechanism. With this aim, in 2010 the GTCT finished formulating a regulatory proposal to establish a National Preventive Mechanism, which was sent to different authorities, especially in the Executive Power. In the Executive Power, the National Human Rights Council, presided over by the Minister of Justice, agreed that the Ombudsman's Office should be in charge of establishing the NPM and set up a working group to draw up the corresponding Draft Law; work which was carried during the second half of 2010. The proposal for the Draft Law to establish the NPM was approved by the National Human Rights Council on 1 December 2010, but it has not yet been approved by the Council of Ministers or brought before the National Congress.

108. In May 2008 the Peruvian delegation offered to establish the NPM before the United Nations Human Rights Council, within the framework of its voluntarily assumed commitments under the system of the Universal Periodic Review. However, to date this commitment has not been complied with, well exceeding the deadline established in the Optional Protocol, which expired for Peru on 14 October 2007.

109. It is necessary that the Peruvian State approve the Draft Law that establishes the National Preventive Mechanism, guaranteeing its autonomy and independence and establishing effective coordination mechanisms with the civil society organizations dedicated to human rights.

110. The situation of the NPM Draft Law became so difficult that the Ombudsman's Office sent an official communication to the Ministry of Justice and Human Rights indicating that if the necessary financial resources are not allocated it will not take on this role.⁵³(Annexe 5)

In relation with the Security Council resolutions on this matter, please report on the legislative, administrative and other types of measures adopted to combat terrorism. Likewise, please indicate if these measures have affected any legal and practical guarantees with regard to human rights.

111. In paragraph 236 of the State Report mention is made of a series of legislative decrees that refer to measures adopted by the State to combat terrorism. Mention is made of Legislative Decree No. 927, which regulates criminal procedure in relation to crimes of terrorism.

112. Concerning this, it must be informed that on 12 October 2009, National Congress passed Law No. 29423 (Annexe 6) which repealed Legislative Decree No. 927. The approved Law establishes the inadmissibility of penitentiary privileges in the form of reduced sentences for work and education, semi-liberty and conditional release (which establish release from prison, taking into account the penitentiary privileges stipulated in article 42 of the Code of Criminal Procedure.)⁵⁴ That is, nobody convicted for the commission of the crime of terrorism will be able to reduce their sentence or have access to any of the above-mentioned penitentiary privileges.

28833. Subsequently, through Supreme Decree 044-2006-RE the Executive Power ratified the Optional Protocol, and the instrument of ratification was deposited on 14 September 2006.

⁵¹ In accordance with article 28 of the Protocol, the Protocol will enter into force on the thirtieth day after the date of deposit, which means that the Protocol has been in force in Peru since 14 October 2006, with the Peruvian State having a maximum period of a year to establish the national prevention mechanism, in accordance with article 17 of the Protocol. However, it has not been established so far.

⁵² The following organizations make up the Working Group against Torture: CAPS, CEAS, FEDEPAZ, REDINFA, IDL, Vicaría de Solidaridad de Sicuani and COMISEDH –institution in charge of coordinating the group -.

⁵³ Official Communication No. 184-2012-DP of 7 March 2012 from the Ombudsman's Office to the Ministry of Justice on the National Mechanism for the Prevention of Torture.

⁵⁴ Penitentiary privileges: Article 42. - The penitentiary privileges as are follows: 1. - Permission to leave. 2. - Reduction of the sentence for work and education. 3. - Semi-liberty. 4. - Conditional release. 5. - Conjugal visits 6. - Other privileges.

Please indicate if the legislation of the State Party prevents and prohibits the production, trade, import, export and use of equipment specifically intended to inflict torture or other cruel, inhuman or degrading treatment. If this is the case, please provide information on its content and application. If it is not the case, please provide indicate if the possibility of passing legislation of this type is under active study.

113. As the Peruvian State indicates in its State Report (paragraph 238), there is a legislative vacuum that must be filled, as there are no regulations that expressly prevent or prohibit the production, trade, import, export and use of equipment specifically intended to inflict torture or other cruel, inhuman or degrading treatment. Neither are there regulations that prohibit or control the export or import of training services to security forces and private security companies regarding the management and employment of these instruments.

Please indicate if NGOs have been consulted for the preparation of this report.

114. The State Report was sent to the NGOs but several observations that were made at the time were not taken into account.

GENERAL INFORMATION ON THE HUMAN RIGHTS SITUATION AT A NATIONAL LEVEL INCLUDING NEW MEASURES RELATED TO THE APPLICATION OF THE CONVENTION.

Please provide information on the most recent relevant changes that may have affected the legal and institutional framework for the promotion and protection of human rights that have occurred since the presentation of the previous periodic report, including any relevant judicial decision.

115. Regrettably, the situation is not very encouraging. The sentences on torture cases have not been favourable, but, rather, impunity has continued, as in the case of "J.Z.B.", mentioned at the start of this report.

116. Another case is that of "C.C.A.",⁵⁵ who in spite of suffering nasal injuries due to the beating he received from police officers, the Second State Criminal Prosecutor's Office disqualified it as torture and only admitted that they were slight injuries (see annexe 7). It alleged in paragraph four of the Prosecutor's Report: "the absence of any material requirement related to an offence, such as to cause grave and cruel suffering" (the underlining was added by us), thus introducing an element in the crime of torture not stipulated in the law: *cruelty*. The emphasis is placed on the degree of injury evidenced in the medical certificates, and does not account for the context in which the ill-treatment took place.

⁵⁵ According to the information COMISEDH has.

RECOMMENDATIONS

The ICJ and COMISEDH respectfully request the Committee against Torture to reiterate to the Peruvian State the recommendations it made to it in its 18 May 2006 report and whose compliance is pending:

1. The State must adopt effective measures to prevent torture in all the territory under its jurisdiction. The State has the obligation to investigate in a prompt, impartial and effective manner all the complaints filed and ensure that those convicted receive proper punishment and that the victims are granted reparations.
2. The State must establish a national register of all the complaints filed by persons who state that they have been victims of torture, and other cruel, inhuman or degrading treatment.
3. The State must ensure that the Public Prosecutor's Office and the Institute of Forensic Medicine have adequate financial resources of their own and that their personnel have the appropriate training to exercise their duties.
4. The State must adopt efficient measures so that anybody who denounces acts of torture or ill-treatment is protected against acts of intimidation as well as possible reprisals for having filed these complaints. The State must investigate all the denounced cases of intimidation against witnesses and establish an adequate mechanism to protect the witnesses and victims
5. The State must ensure that in all the cases in which it has been established as responsible for acts of torture, and other cruel, inhuman or degrading treatment, it fulfills the obligation of providing the victims with adequate reparations.

The ICJ and COMISEDH respectfully request the Committee against Torture to require that the Peruvian State adopts the following measures:

6. The establishment of a National Preventive Mechanism within a short period of time, guaranteeing its autonomy and independence and establishing effective coordination mechanisms with civil society organizations dedicated to human rights.
7. The broadening and improvement of training for security state agents (police officers, members of the Armed Forces, prison staff and personnel of the municipal Serenazgo) in human rights matters, with special emphasis on the prohibition of torture.
8. The training of judges and prosecutors so that they correctly apply the crime of torture, in accordance with international human rights instruments.
9. Explicitly establish in the criminal legislation that the due obedience to higher orders in cases of torture does not exempt or lessen criminal responsibility.
10. The issuing of guidelines which clearly indicate that the acts of tolerance and practice of torture are very grave, and that the official or public servant involved incurs in acts that are grounds for termination or early retirement.
11. That during legal proceedings, any official, employee or State agent who is suspected of having committed torture, be suspended from active service as a preventive measure. And that he be immediately disqualified if convicted.
12. The application of the Assessment Guide of Psychic Damages in Adult Victims of Family and Sexual Violence and Torture and other Forms of Intentional Violence, (*Guía de Valoración del Daño Psíquico en Víctimas Adultas de Violencia Familiar, Sexual, Tortura y*

otras Formas de Violencia Intencional”) a guide approved by Public Prosecutor’s Office Resolution No. 2543-2011-MP-FN of 26 December 2011.⁵⁶

13. The amendment of the crime of torture to provide the victims with greater protection, adapting it to the formula contained in the framework of international instruments on the matter, ratified by Peru.

14. The guarantee of comprehensive and proportional reparation for the victims of torture. In order to fulfill this, it must be established that the State should be included as a third party liable to pay civil reparations in the proceedings for the crime of torture. In addition, victims of torture and their dependents must have the right to receive from the State immediate reparation that includes restitution, fair financial compensation and adequate medical attention and rehabilitation.

15. The review of existing legislation about the attribution of offences to moral or legal persons, to include the commission or complicity in the commission of torture and other cruel, inhuman or degrading treatment among the offences attributable to moral or legal persons.

16. The adoption of a law that prohibits or strictly controls the export or import of goods, products or services for the intention of the practice of torture or that may be highly likely to have a double use. The prohibition of training in the employment of these means and instruments must also be included.

17. The permanent closure of the Penitentiary Establishment of Challapalca.

⁵⁶Public Prosecutor’s Office Resolution No. 2543-2011-MP-FN, of 26 December 2011, which approves the “Assessment Guide of Psychic Damages in Adult Victims of Family and Sexual Violence and Torture and other Forms of Intentional Violence” (“*Guía de Valoración del Daño Psíquico en Víctimas Adultas de Violencia Familiar, Sexual, Tortura y otras Formas de Violencia Intencional*”) (Anexe 8).

ANNEXES

Annexe 1: Resolution of the Constitutional Court of 3 May 2012 in file No. 00022-2011-PI/TC which accepts the claim of unconstitutionality against Legislative Decrees No. 1094 and 1095.

Annexe 2: Supreme Court Ruling No. 1776-2008 of 1 September 2008, on the case of "J.Z.B."

Annexe 3: Official Communication No. 0632-2012-DP of 22 June 2012 sent by the Ombudsman's Office to the Ministry of Interior.

Annexe 4: National Penitentiary Institute (INPE). *Problemática Penitenciaria*. Lima 13 April 2012.

Annexe 5: Official Communication No. 184-2012-DP of 7 March 2012 sent by the Ombudsman's Office to the Ministry of Interior on the National Mechanism for the Prevention of Torture.

Annexe 6: Law No. 29423 which repeals Legislative Decree No. 927.

Annexe 7: Prosecutor ruling No. 134-2011, the Second State Criminal Prosecutor's Office, on the case of "C.C.A".

Annexe 8: Resolution of the Public Prosecutor's Office No. 2543-2011-MP-FN, of 26 December 2011, that approves the Assessment Guide of Psychic Damages in Adult Victims of Family and Sexual Violence and Torture and other Forms of Intentional Violence ("*Guía de Valoración del Daño Psíquico en Víctimas Adultas de Violencia Familiar, Sexual, Tortura y otras Formas de Violencia Intencional*").