



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

Distr.: General  
15 September 2011  
English  
Original: Spanish

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**Committee against Torture**

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

**Sixth periodic report of States parties due in 2009, submitted  
in reply to the list of issues (CAT/C/PER/Q/6) transmitted to  
the State party under the optional reporting procedure  
(A/62/44, paragraphs 23 and 24)**

**Peru<sup>\*</sup>, <sup>\*\*</sup>, <sup>\*\*\*</sup>**

[28 July 2011]

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\* The fourth periodic report of Peru appears in document CAT/C/61/Add.2; it was considered by the Committee at its 697th and 699th meetings (see CAT/C/SR.697 and 699), held on 2 and 3 May 2006. For the concluding observations, see CAT/C/PER/CO/4.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

\*\*\* The annexes to this document may be consulted in the Secretariat records.

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## I. Introduction

1. On ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention against Torture), the State of Peru assumed the international obligation to submit periodic reports to the Committee against Torture in accordance with article 19 of the aforementioned Convention. The State of Peru, aware of its responsibilities and in keeping with its international human rights obligations, hereby submits its sixth consolidated periodic report.

2. This document reflects the ongoing commitment of the State of Peru to respecting, protecting and exercising the rights and performing the duties set out in the Convention against Torture. This commitment takes the form of the legislative, administrative and other measures that the State of Peru has implemented since it submitted its last periodic report to the Committee. These measures are intended gradually to align current laws and public policies with the provisions of the Convention against Torture.

3. The National Human Rights Council (CNDH), as the body responsible for drafting public policies concerning human rights, is also responsible for drafting and consolidating the periodic reports in cooperation with the relevant institutions. In the light of its review of the periodic reporting procedure, the Council undertook to prioritize the drafting and submission of the sixth consolidated periodic report under the Convention against Torture. In cooperation with the South America Regional Office of the Office of the United Nations High Commissioner for Human Rights, the Council therefore decided to organize a Workshop on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, general comments and drafting guidelines for the periodic report of Peru on 19 April 2011. The workshop trained a total of 33 public servants from various State institutions to cooperate on the preparation of the present report.

4. This report was thus drafted by a working group composed of National Human Rights Council officials under the supervision of its Executive Secretariat. The working group had access to the documentation and information received by the officials who had attended the workshop, who provided it with material and jointly validated the information contained in this report. The content of each article reflects the input of each of these officials to the working group.

5. Once the drafting had been completed, the report was circulated to members<sup>1</sup> and observers of the National Human Rights Council, which include the Ombudsman's Office and civil society representatives, such as the Peruvian Episcopal Conference, the National Evangelical Council and the National Coordinator for Human Rights, for comments. Finally, the periodic report was approved at Extraordinary Session No. 01-2011 of the National Human Rights Council on 6 July 2011.

6. Thus the State of Peru is pleased to submit its sixth consolidated periodic report, which provides an accurate and precise presentation of the progress achieved and the challenges faced in connection with the articles of the Convention against Torture. The statistics and normative developments contained herein reflect the most significant

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<sup>1</sup> The National Human Rights Council is composed of the Office of the President of the Council of Ministers, the Ministry of Justice, the Ministry of Foreign Affairs, the Ministry of Defence, the Ministry of the Interior, the Ministry of Education, the Ministry of Health, the Ministry of Labour and Promotion of Employment, the Ministry for Women and Social Development, the Ministry of the Environment, the Ministry of Energy and Mines, the Judiciary, the Public Prosecution Service and the Prosecutor-General's Office.

achievements, as well as the challenges currently facing the country. A list of annexes is attached to the present report.

7. It may be noted that, as a State that is respectful of human rights, Peru does not permit or tolerate acts of torture or other cruel, inhuman or degrading treatment or punishment in its territory. Moreover, it takes every measure possible to prevent and punish torture in the country in keeping with the provisions of the Convention against Torture.

## **II. Information relating to the articles of the Convention**

8. Replies to the list of issues pertaining to the submission of the sixth periodic report of Peru are given below.

### **A. Article 2**

#### **1. Reply to paragraph 1 of the list of issues (CAT/C/PER/Q/6)**

9. The information referred to in subparagraphs (a) to (d), (g) and (h) of this paragraph is provided by the authorities that deal with cases of torture. It includes cases of alleged torture reported to the Ombudsman's Office and the Institute of Forensic Medicine by members of the public; cases of alleged torture brought before the Public Prosecution Service and the Judiciary; and cases of torture dealt with by the Judiciary for which a prison sentence was handed down.

10. It should be remembered that not all allegations brought before the Ombudsman's Office and the Institute of Forensic Medicine are found to constitute acts of torture by the Public Prosecution Service and the Judiciary, as such allegations may be made by victims or plaintiffs without being granted legal status by the Public Prosecution Service. In some cases, the authorities may find a complaint lodged with the Ombudsman's Office to constitute an act of torture, while in others a complaint may lead to the identification of other offences, such as bodily harm, abuse of authority etc., or may be dismissed. For this reason, allegations of torture received by the Ombudsman's Office and the Institute of Forensic Medicine and those brought before the Public Prosecution Service may differ considerably.

11. The information contained in the present report refers only to cases of torture and not to other types of offence.

#### **Reply to paragraph 1 (a)**

12. In compliance with the recommendations of the Truth and Reconciliation Commission and in keeping with the State's fundamental aim of defending the person and ensuring respect for personal dignity, as expressed in article 1 of the Peruvian Constitution, the specialized human rights subsystem<sup>2</sup> has been set up to operate through institutions such as the Public Prosecution Service and the Judiciary.

13. The Public Prosecution Service, in keeping with its duty under article 139 of the Constitution to guarantee due process, which requires it to investigate offences and to institute legal proceedings where necessary, has assumed the role of instituting proceedings in cases of human rights violations (including torture). In accordance with article 25 of the American Convention on Human Rights (Pact of San José, Costa Rica), it therefore authorized the establishment of the National Criminal Prosecutor's Office and the supra

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<sup>2</sup> Administrative Decision No. 170-2004-CE-PJ of 30 September 2004.

provincial criminal prosecutors' offices to investigate the crimes against humanity specified in Chapters I, II and III of Title 14 A of the Criminal Code and common crimes constituting human rights violations, as well as other related crimes. These bodies are responsible for conducting investigations and instituting legal proceedings before the National Criminal Court and the supra provincial criminal courts, which are competent to handle cases involving such crimes. For additional information on the subsystem, see paragraphs 160 to 162 and 164.

14. According to information provided by the specialized human rights subsystem of the Public Prosecution Service,<sup>3</sup> from 2003 until May 2011, 343 cases of alleged torture have been reported, of which 105 were attributed to army officers, 106 to members of the national police, 4 to the navy, 3 to the air force, 14 to personnel of the National Prison Institute, 4 to members of the SERENAZGO, a civilian security service under the supervision of the municipalities, while 107 cases could not be attributed (see annex 1).

15. Details regarding the status of the reported cases of torture may be found in annex 1, which establishes that of the 343 cases of alleged torture, 142 have been dismissed, 35 have been temporarily suspended, 30 have been made official, 78 are under investigation and 58 have been referred to another authority.<sup>4</sup>

#### **Reply to paragraph 1 (b)**

16. The Institute of Forensic Medicine keeps a register of the allegations of torture made by victims or plaintiffs, on which a ruling from the competent authority has not yet been obtained. Of all the cases handled from 2006 to 2010, 669 were related to injuries resulting from alleged torture and 136 to deaths caused by alleged torture, making a total of 805. In 2006, 89 cases of alleged torture were reported; in 2007, 121; in 2008, 112; in 2009, 339; and in 2010, 144, so that the highest number of cases was reported in 2009 (see annex 2).

#### **Reply to paragraph 1 (c)**

17. As explained in paragraph 13, the National Criminal Court is the judicial body responsible for dealing with crimes against humanity, common crimes constituting human rights violations and other related crimes. Between its establishment in September 2004 and February 2011, the National Criminal Court investigated and instituted proceedings for 37 cases of torture, of which 17 resulted in a prison sentence, 18 in an acquittal, 1 in dismissal, while 1 was withdrawn by the prosecution (see annex 3).

18. Of the 37 cases (not counting the 1 that was withdrawn by the prosecution), 14 of the judgements were accepted,<sup>5</sup> 20 were executory,<sup>6</sup> and 3 are still pending before the Supreme Court of the Republic (see annex 4).

19. There are 16 cases currently being examined by the supra provincial criminal courts and 3 that are the subject of oral proceedings before the National Criminal Court (see annex 5).

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<sup>3</sup> This information includes data from the judicial districts of Lima, Huancavelica, Huancayo, Huánuco and Ayacucho. The information from the ordinary prosecutors' offices that have assumed jurisdiction over human rights violations is still being gathered in preparation for processing.

<sup>4</sup> The cases referred to another authority are those that, following an inquiry, were determined not to constitute acts of torture and so were referred to ordinary prosecutors' offices.

<sup>5</sup> A judgement is considered as accepted when the parties expressly decline to contest it or allow the time limit for doing so to elapse.

<sup>6</sup> A judgement is executory when it has the status of *res judicata* and when no appeal may be entered against it because it has been accepted by the parties or because it has been contested and all remedies have been exhausted.

20. Details on the prison sentences handed down for the aforementioned cases of torture may be found in annex 6.

**Reply to paragraph 1 (d)**

21. According to the information provided by the Institute of Forensic Medicine, between 2006 and 2010, a total of 669 cases of alleged torture were dealt with, of which 378 involved men and 291 involved women. Of the 136 cases of death resulting from alleged torture, 92 involved men and 44 involved women (see annex 7).

22. As far as the age of victims is concerned, the majority of victims who suffered injuries as a result of alleged torture were in the 30–40 age bracket (131 cases out of 669). The majority of those who died as a result of injuries sustained from alleged acts of torture were the 30–40 age group (25 cases), and the 50–65 age bracket (25 cases out of 136) (see annex 8).

23. According to the information provided by the National Criminal Court, the majority of the prison sentences handed down for the crime of torture arise from cases referred to it by the national police. Men were the perpetrators of the acts of torture in all cases. No information on the ethnicity of the victims is available (see annex 9).

**Reply to paragraph 1 (e)**

24. The disciplinary code of the national police classifies the act of torture as a very serious crime. The General Inspectorate of the national police is responsible for conducting administrative disciplinary inquiries and is empowered to prescribe preventive measures, such as temporary suspension from duty according to the gravity of the offence.

25. Act No. 29356 of May 2010, which governs the disciplinary code of the national police, states that the following constitute very serious offences that warrant the dismissal of the police officer concerned: “direct involvement in serious crimes against the life, body or physical well-being or the freedom of an individual, and intentional damage to public or private property when this proves seriously detrimental to the reputation of the institution” (Offence MG 67), and “committing acts classified by law as intentional crimes because of, on the occasion of or as a consequence of a given function or office” (Offence MG 70).

26. The Ministry of the Interior announced that 24 officers of the national police were dismissed for offences under Act No. 28338<sup>7</sup> as follows: MG 20 “inflicting, instigating or tolerating acts of torture or inhuman or degrading acts”, and MG 21 “performing police duties with an unnecessary or disproportionate use of force, by any means, such as may lead to serious injuries or death”, and for offences under Act No. 29356 as follows: MG 58 “abusing their powers and perpetrating acts of torture or inhuman, degrading, discriminatory or humiliating treatment against persons in their custody”, and MG 67. Details of the penalties imposed between 2009 and 2010 may be found in annex 10.

27. Army, air force and navy personnel may be penalized by either the civil or the military courts. In the military courts, personnel are subjected to an administrative inquiry conducted by the inspectorate of the relevant institution before the inquiry is referred to the General Inspectorate of the Ministry of Defence, depending on the case, which may lead to various types of penalties, such as dismissal, mandatory transfer or disciplinary measures. However, before members of the Armed Forces may be dismissed, they must first be convicted of an intentional crime.

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<sup>7</sup> The former Act regulating the disciplinary code of the national police, which was superseded by Act No. 29356.

28. As to the preventive or punitive measures that may be prescribed for committing an act of torture, in accordance with article 29 of Act No. 28359, which regulates the military status of officers of the Armed Forces, any officer who is sentenced to more than 6 months in prison by a competent legal authority for committing any type of offence shall be considered as being withdrawn from service until the corresponding criminal trial has ended. In accordance with articles 31 and 34 of the aforementioned Act, if the officers receive a prison sentence, they are placed on availability or withdrawn from service.

29. In 2009, four former prison officers were dismissed from the National Prison Institute for having committed crimes of torture. The compilation of the information relating to the other years covered by the present report is still continuing (see annex 11).

#### **Reply to paragraph 1 (f)**

30. According to article 139 of the Constitution, the military courts are independent from the Judiciary. The normative framework of the military courts is regulated by article 173 of the Constitution, which establishes its sole purpose as administering criminal justice to members of the Armed Forces and the national police committing service-related offences. In the light of this constitutional protection and in accordance with the regulations in force, namely Act No. 29182 regulating the structure and functions of the military and police courts, as amended by Decree No. 1096, it is therefore not possible to try military personnel in military or police courts for crimes against humanity, including the crime of torture.

31. The Constitutional Court, in a ruling on File No. 0017-2003-AI/TC of 16 March 2004, stated that, in order for an illicit act to constitute a service-related offence, three criteria must be met: (a) the act must be committed by members of the forces on active service; (b) the act attributed to such persons must be committed in the course of their military or police duties, that is to say, while they are on active service; and (c) the act in question must affect the specific legal interests pertaining to the existence, structure, operability and fulfilment of the purposes of military institutions. The Constitutional Court also stated that, in accordance with article 173 of the Constitution, the material jurisdiction of specialized military courts extended only to offences committed by officers of the Armed Forces or the national police in the context of military duties.

32. Therefore, the jurisdiction of military courts extends only to cases involving service-based offences, where the three above criteria are met. It follows that the civil courts will be the authority competent to handle cases involving criminal acts of torture against civilians committed by public servants. This is all the more so given that article 139, paragraph 3, of the Constitution establishes that: "No person shall be diverted from the jurisdiction predetermined by law [...]". Consequently, the civil courts are those responsible for conducting inquiries into cases of torture.

#### **Reply to paragraph 1 (g)**

33. The crime of torture was incorporated into the Criminal Code by virtue of Act No. 26926,<sup>8</sup> which added Title 14 A entitled Crimes against Humanity. That was the first time that the crime of torture had been specified in article 321 of the Criminal Code. Cruel, inhuman or degrading treatment and punishment are not referred to as such in our legislation. However, there is a bill, namely Bill No. 04672/2010-CP, which aims to incorporate the crime of cruel, inhuman or degrading treatment into the Criminal Code. The

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<sup>8</sup> Act No. 26926 of 21 February 1998, amending several articles of the Criminal Code and incorporating Title 14 A on Crimes against Humanity.

bill is currently before the Justice and Human Rights Committee of the Congress of the Republic for consideration.

34. Two criteria were examined when prescribing penalties for the crime of torture specified in article 321 of the Criminal Code. A basic act of torture is punishable by a prison sentence of between 5 and 10 years. In the case of aggravated torture, two criteria were examined: whether the act of torture inflicts serious injury, which the officer could have foreseen, and whether the act of torture was the cause of death. If the first of these criteria is met, the act is punishable by a prison sentence of between 6 and 12 years, while if the second is met, the act is punishable by a prison sentence of between 8 and 20 years.

35. With regard to the cases of torture mentioned in paragraph 17 for which a prison sentence was handed down, to date 17 prison sentences for the crime of torture have been handed down by the National Criminal Court, which is the authority competent to handle cases of human rights violations. Details of the sentences imposed may be found in annex 9.

36. In keeping with its functions, the Ombudsman's Office, in its reports No. 112 "The difficult path to reconciliation. Justice and redress for the victims of the violence"; No. 128 "The State and the victims of the violence. Where is our policy on justice and redress headed?"; and No. 139 "Five years of justice and redress in Peru. Overview and outstanding challenges", has considered some of the problems related to investigating and prosecuting cases of torture, as well as sentencing, which have led to recommendations to the relevant authorities.<sup>9</sup>

#### **Reply to paragraph 1 (h)**

37. In order to reply to this question, acquittal is understood as referring to the absence of criminal responsibility, as determined by a court ruling. To date, 18 cases of torture have resulted in acquittal (see annex 12).

## **2. Reply to paragraph 2 of the list of issues**

38. In 2002, the Ombudsman's Office published Report No. 42 on "the right to life and personal integrity in the performance of military service in Peru". The report recorded 174 complaints of alleged torture and cruel, inhuman or degrading treatment committed in the context of the performance of military service, dating between April 1998 and August 2002. The report stated that the majority of the complaints were lodged with the Ombudsman's Office in 1999. Of the 174 complaints of alleged torture and cruel, inhuman or degrading treatment dealt with by the Ombudsman's Office, 155 were attributed to the army, while only 12 and 7 complaints were attributed to the air force and navy respectively.

39. In 2006, the Ombudsman's Office published Report No. 112 on "The difficult path to reconciliation. Justice and redress for victims of violence". The report recorded 72 complaints of alleged torture and cruel, inhuman or degrading treatment attributed to members of the Armed Forces between September 2002 and July 2006. The report does not specify which armed force in particular was responsible. Similarly, Report No. 128 on "The State and the victims of the violence. Where is our policy on justice and redress headed?" recorded a total of 139 complaints of alleged torture and cruel, inhuman or degrading treatment between August 2006 and September 2007, of which 33 were attributed to the Armed Forces. Like the previous report, it fails to mention which armed force was responsible.

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<sup>9</sup> Available at: [www.defensoria.gob.pe](http://www.defensoria.gob.pe), from 13 July 2011.

40. In 2009, the Ombudsman's Office recorded 57 complaints of alleged torture, 6 of which were attributed to members of the Armed Forces. In 2010, the Ombudsman's Office recorded a further 53 complaints of alleged torture, 4 of which were attributed to members of the Armed Forces. Information disaggregated by institution is not available for either year.

41. In addition, 343 alleged cases of torture were reported to the Public Prosecution Service between 2003 and May 2011 (see paragraph 14 above), 105 of which were attributed to army personnel.

42. In terms of the measures adopted to prevent and investigate these acts, as explained in paragraphs 30 to 32, the civil courts are the authority responsible for conducting investigations through the Public Prosecution Service, in accordance with article 159 of the Constitution.<sup>10</sup> The functions assigned to the Public Prosecution Service by the Constitution require it to investigate any act that violates citizens' rights, including the rights of alleged victims of torture. In such cases, the supra provincial criminal prosecutors' offices are responsible for conducting the appropriate investigations. However, in their absence, the cases are handled by ordinary prosecutors' offices.

43. The Military Service Personnel Support Office was set up in January 2009 under Act No. 29248, the Military Service Act, mainly to ensure respect for the fundamental rights of military service personnel. In addition, it is responsible for receiving, processing and providing recommendations and information on the complaints, denunciations, requests, petitions, suggestions and enquiries made by military service personnel and members of their families. If the complaints are administrative and lie outside criminal jurisdiction, the Armed Forces must refer them to the civil courts. The General Inspectorate for the army can initiate administrative investigations where necessary, and if so refer them to the General Inspectorate of the Ministry of Defence.

44. Furthermore, Military Service Personnel Support Offices operate within the inspectorates for units, bases and quarters of the different levels of command. The Support Offices are attached to the general inspectorates of the Armed Forces, which systematically report all cases to the General Inspectorate of the Ministry of Defence. To date, 132 Military Service Personnel Support Offices have been set up within various units of the Armed Forces. Moreover, Directive No. 04-MINDEF-K was issued in order to lay down procedures and norms to ensure the proper functioning of the Military Service Personnel Support Offices and to assign responsibilities for applying the Military Service Act and, in so doing, ensure respect for the fundamental rights of military personnel. In addition, denunciations and complaints can be made via the website of the Ministry of Defence ([www.mindef.gob.pe](http://www.mindef.gob.pe)) (see annex 13).

45. Men and women performing military service in military bases are guaranteed the opportunity to report alleged acts of torture to which they were subjected, as each military base has an officer with overall responsibility who must bring all alleged acts of torture before his immediate superior for appropriate action. It should also be noted that there are guidelines for the prevention of torture for personnel engaged in active military service.

46. Directive FAP 35-4 lays down the initial complaints procedure available to air force personnel through the inspectorates of air force units and quarters. This procedure is

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<sup>10</sup> The Public Prosecution Service is responsible, either on its own initiative or at the request of a party, for instituting legal proceedings to uphold the rule of law and the public interests protected thereby, as well as for representing society in legal cases and instituting criminal proceedings on its own initiative or at the request of a party.

intended as a means of settling complaints and guaranteeing protection to military personnel engaged in voluntary military service who report acts of torture.

47. The Ministry of Defence ordered the establishment of an Ombudsman's Office for Military Personnel, the purpose of which is to safeguard the rights of military personnel against any threat or act that directly affects their well-being or the institutional defence of the Armed Forces. One of its main functions is to ensure that the activities of military personnel, irrespective of rank or grade, are carried out correctly and without prejudice to their fundamental rights. However, its effective implementation is still pending.

### **3. Reply to paragraph 3 of the list of issues**

48. The recommendations made by the Office of the Ombudsman are contained in a series of reports addressed to the authorities concerned. The recommendations on torture for the period covered in the present report are contained in report No. 91 on "Cases affecting life and alleged torture and other cruel, inhuman or degrading treatment attributed to officers of the national police"; report No. 112 on "The difficult path to reconciliation. Justice and redress for the victims of the violence"; report No. 128 on "The State and the victims of the violence. Where is our policy on justice and redress headed?"; and report No. 139 "Five years of justice and redress in Peru. Overview and outstanding challenges".

49. The Government has taken steps to implement a number of the recommendations made by the Ombudsman's Office. The Optional Protocol to the Convention against Torture was signed on 23 July 2006. Furthermore, training has been provided to various authorities working the area of torture, details of which may be found in the replies to paragraphs 9 and 10 of the list of issues. Similarly, the Institute of Forensic Medicine has adopted measures to ensure the effective implementation of forensic examination procedures for the detection of injuries or death resulting from torture.

50. The Office of the President of the Council of Ministers has submitted Bill No. 4862/2010-PE to the Congress of the Republic, to amend article 8 of Act No. 29360 on legal aid with a view to providing legal assistance to victims of serious human rights violations. The National Human Rights Council has in turn drafted a bill to implement the national preventive mechanism, appointing the Ombudsman's Office as the body responsible. Moreover, the national police and prison establishments have been equipped with human rights handbooks that apply to both the police and prison services and lay down rules governing their conduct while on duty.

51. These recommendations were implemented in keeping with the human rights obligations assumed by the State and through the efforts of the Ombudsman's Office, which has introduced various methodologies and strategies aimed at ensuring their effective implementation. These include working meetings with the authorities, round tables, joint workshops and training activities, among others.

52. It is important to recognize the State's continuing commitment to implementing the recommendations of the Ombudsman's Office in all the State sectors, endorsing the functions assigned to it by the Constitution and making its mandate more widely known. The Ombudsman's Office itself has made efforts to raise awareness of its work through State radio and television, and has offered training on its activities and on respect for human rights. In addition, the office has made considerable efforts to increase its visibility among the population through the use of information technology, including web pages, e-mail and blogs, as well as information fairs, workshops, street outreach and visits to schools.

53. The National Human Rights Council also acts as a forum for dialogue among various State bodies, that include the Ombudsman's Office. This allows members and observers to express their opinions and to make recommendations, which are subsequently

collected by the National Human Rights Council and used to advise the Executive on public policies and the promotion and protection of human rights.

#### **4. Reply to paragraph 4 of the list of issues**

54. There is currently no specific registry for cases of torture.<sup>11</sup> However, there is a general register that records all reported crimes, known as the support system for prosecution work, which keeps a record of all complaints lodged with the Public Prosecution Service. This information is publicly available and may be consulted under the headings of complaint number, case number, name of accused, name of plaintiffs and offences. Similarly, any citizen can consult the status of any given investigation by case number alone via the web page of the Public Prosecution Service.

55. It may be noted that, while the previous paragraph states that there is no specific registry as such, it is possible to obtain information on the complaints of torture lodged with the Public Prosecution Service from the reports made available by the support system for prosecution work, which provide statistics relating to the offence in question in accordance with the information provided by the central authority for planning and budgetary matters of the Public Prosecution Service. The Public Prosecution Service also has a Crime Observatory, which aims to support, correlate and disseminate information, statistics and indicators related to criminality in Peru transmitted by the prosecution system and supporting bodies.

56. The Public Prosecution Service possesses a national register of detainees and persons sentenced to imprisonment, which is useful for protecting and ensuring respect for human rights. This service currently runs a register of persons sentenced to imprisonment or remanded in custody, and the data may be accessed via its website ([www.mpfm.gov.pe/renadespple](http://www.mpfm.gov.pe/renadespple)).

57. It should also be noted that the Ombudsman's Office does not possess a specific national registry for cases of torture. It does, however, run a register of all complaints of acts affecting human rights, namely the prosecution information system (SID), from which information may be obtained on complaints of alleged torture and other cruel, inhuman or degrading treatment.

58. It should also be pointed out that in its reports, No. 42 on "The right to life and personal integrity in the performance of military service in Peru", No. 91 on "Cases affecting life and alleged torture and other cruel, inhuman or degrading treatment attributed to members of the national police", No. 112 on "The difficult path to reconciliation. Justice and redress for victims of violence", No. 128 on "The State and the victims of the violence. Where is our policy on justice and redress headed?", and No. 139 on "Five years of justice and redress in Peru. Overview and outstanding challenges", the Ombudsman's Office examined the complaints of alleged torture attributed to law enforcement officers, such as members of the national police, members of the Armed Forces including the army, the air force and the navy, and prison officers lodged over various periods.

#### **5. Reply to paragraph 5 of the list of issues**

59. Under exceptional circumstances or if required by circumstances, by virtue of article 137, the Constitution allows the possibility of restricting rights relating to freedom and personal security, the inviolability of the home and freedom of assembly and transit, for a

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<sup>11</sup> The information contained in the previous paragraphs on the acts of torture reported to the Public Prosecution Service was provided by the Office of the Coordinating Prosecutor of the National Criminal Prosecutor's Office and the supra provincial criminal prosecutors' offices.

period that may not exceed 60 days, but which may be renewed, and subject to seeking approval of the Council of Ministers and to informing the Congress of the Republic.

60. The restriction of the rights mentioned in the previous paragraph in no way precludes citizens from exercising the guarantees enshrined in article 200, penultimate paragraph, of the Constitution, should they believe that their rights are being violated. The Constitution is binding even in a state of emergency, as is the obligation to respect fundamental rights, the norms and principles of international human rights law and international humanitarian law.

61. Subject to the exceptions mentioned in paragraph 59 above, the fundamental rights enshrined in the Constitution and international treaties may not be restricted under any circumstances. It is fitting to recall the ruling of the Constitutional Court to the effect that:

“[...] all use of weapons involving the use of force must comply with the constitutional principles of proportionality, necessity, legitimacy and humanity, these being applied in the light of the international human rights treaties and international humanitarian law ratified by Peru [...]”.<sup>12</sup>

62. The use of force in other situations of violence, in areas where a state of emergency has been declared and where the national police are responsible for internal law enforcement, must comply with principle 11 of the basic principles governing the use of force and firearms by law enforcement officers and with articles 2 and 3 of the code of conduct for public servants responsible for law enforcement.

63. With regard to the measures adopted to ensure compliance with the human rights obligations assumed by Peru during states of emergency, the Armed Forces, on assuming responsibility for enforcing domestic law, ensure that no act is committed that runs counter to the obligations undertaken under the Convention against Torture. Furthermore, Peru honoured its obligation of informing the Secretary-General of the United Nations in good time of the decisions taken that required a state of emergency to be declared in certain areas and certain rights to be suspended.

64. For additional information, a list of the states of emergency declared over the period between 2005 and 19 May 2011 has been appended to annex 14.

65. In 2010, Legislative Decree No. 1095 laid down regulations governing the use of force by the Armed Forces in the national territory. The aim of the decree was to establish a legal framework to regulate the principles, methods, conditions and limits for the use of force by the Armed Forces in keeping with the functions assigned to them by the Constitution. Moreover, the decree legislates on the use of force in cases where the Armed Forces are required to support the national police, whether or not a state of emergency has been declared.

## **6. Reply to paragraph 6 of the list of issues**

66. The Institute of Forensic Medicine<sup>13</sup> is part of the Public Prosecutor's Office, which, as a constitutionally independent body, comes under a separate heading in the public sector budget. Most of the funding for the discharge of its functions under the Constitution and Organizational Act comes from the budgetary allocation set by the Ministry of Economy and Finance, from revenues of the public treasury, which, according to the classification of

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<sup>12</sup> Ruling of the Constitutional Court. File No. 00002-2008-PI/TC concerning unconstitutionality proceedings.

<sup>13</sup> The budget of the Public Prosecution Service also covers the budget of the Institute of Forensic Medicine.

sources of funding, originate primarily in ordinary resources. In addition, it receives limited resources of its own, generated by the payment of fees for the services of the Institute of Forensic Medicine at the national level, deposits made by accused persons under the principle of discretionary prosecution, payment to obtain certified copies, the preparation of minutes and consultations at the Reports Office and other services.

67. Each year, the central planning and budgetary authority draws up a draft institutional budget in accordance with the guidelines on programming and preparation issued by the National Directorate for the Public Budget of the Ministry of Economy and Finance, which specifies the resources required to meet institutional targets. That draft is then approved by the Board of Senior Government Prosecutors before being submitted to the Executive and justified before the Congress of the Republic in accordance with article 160 of the Constitution. Once the budget has been approved and allocated to this sector, the resources are distributed on the basis of pre-established requirements.

68. With respect to torture, the Institute of Forensic Medicine has been working to introduce various norms to prevent torture in keeping with international standards for the protection of human rights. In 1998, for instance, the Institute of Forensic Medicine devised forensic examination procedures for the detection of injuries or death resulting from torture<sup>14</sup> and made them obligatory in all departments of the Institute.<sup>15</sup> Subsequently, in 2005, the Institute of Forensic Medicine submitted a project to implement and ensure consistency with the Istanbul Protocol when investigating cases of torture, in the form of a protocol for investigating torture and other cruel, inhuman or degrading treatment, which was to provide an instrument to evaluate cases of torture on the basis of all the necessary information. This protocol has been in place since 2005, successfully overcoming the shortcomings of the previous one. This year, however, the Institute of Forensic Medicine has been working on a newer, more comprehensive form of the protocol, also based on the Istanbul Protocol.

69. Since 2010, the Institute has included a team specialized in dealing with detection of injuries and death in cases of torture (see annex 15). This team is composed of three psychiatrists, two forensic doctors and three psychologists, and operates throughout the country. Owing to a shortage of staff, however, assessments are made by professionals in different locations who, where necessary, may call on the specialized torture team.

70. The Institute of Forensic Medicine is in the process of developing a guide on care for victims of torture in order to equip the professionals working for the Institute with the necessary skills.

71. With regard to the training received by officials working for the Public Prosecution Service, who include not only prosecutors but also professionals working for the Institute of Forensic Medicine, the Public Prosecution Service has its own school, which is responsible for training prosecutors and assistants and has given various courses on human rights and other related topics since 2007 (see annex 16). It may be noted that, in 2008, two training courses organized for professionals working for the Institute of Forensic Medicine dealt with the subject of torture.

72. The Academy of the Judiciary also provides training to prosecutors on various human rights issues, although there is still a need to introduce a course for judges and prosecutors specializing in investigating and penalizing the crime of torture (see annex 17).

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<sup>14</sup> Decision No. 705-98-CEMP of 3 November 1998 of the Executive Committee of the Public Prosecution Service concerning forensic examination procedures for the detection of injuries or death resulting from torture.

<sup>15</sup> Decision No. 627-2000-MP-CEMP of 12 September 2000 of the Public Prosecution Service.

## B. Article 3

### 1. Reply to paragraph 7 of the list of issues

73. According to article 1 of the Constitution, protection of the individual and personal dignity are the supreme goal of society and the State; according to article 2, paragraph 1, every person has the right to life, and according to article 2, paragraph 24 (h), every person has the right to integrity and the right not to be subjected to moral, psychological or physical violence, nor to torture or cruel or degrading treatment.

74. The State of Peru guarantees compliance with article 3, paragraph 1, of the Convention against Torture, article 22, paragraphs 7 and 8, of the American Convention on Human Rights,<sup>16</sup> article 13, paragraph 4,<sup>17</sup> of the Inter-American Convention to Prevent and Punish Torture,<sup>18</sup> article 33, paragraph 1, of the Convention relating to the Status of Refugees,<sup>19</sup> and the obligations contained therein, through the development of the necessary legislation, which in many cases has led to the establishment of mechanisms to ensure compliance.

75. Extradition is subject to the provisions laid down in the Constitution of Peru as the fundamental norm of the State, and in domestic legislation. In accordance with the terms of article 37 of the Constitution, extradition is granted by the executive branch (the Council of Ministers), subject to a report from the Supreme Court, in compliance with the law and with treaties, and according to the principle of reciprocity.

76. Article 516 of the new Code of Criminal Procedure<sup>20</sup> sets out the conditions for granting extradition, which include an evaluation and analysis and the existence of guarantees that justice will be properly administered in the requesting State. The same article establishes that the Prosecutor-General of the Nation (*Fiscal de la Nación*) and the Ministry of Foreign Affairs are competent to report on whether there is any doubt about the administration of justice in the requesting State. Similarly, article 517 (d) of the new Code of Criminal Procedure establishes that extradition shall not take place if the proceedings to which the extradited person would be subjected do not comply with the international requirements of due process.

77. The most important part of this body of law with regard to extradition, however, is article 517, paragraph 3 (d), which establishes that if the offence for which extradition is requested is punishable by the death penalty in the requesting State, and the latter does not give assurances that it will not be applied, then the extradition shall not be granted.

78. In this regard, according to the National Directorate of Justice,<sup>21</sup> Peru may ask the requesting State to guarantee that the person will not be subjected to torture or other cruel, inhuman or degrading treatment. If the requesting State does not provide these assurances

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<sup>16</sup> Adopted by Decree Law No. 22231 of 11 July 1978.

<sup>17</sup> Art. 13: "Extradition shall not be granted, nor shall persons be returned when there are good grounds for believing that their life is at risk, that they will be subjected to torture or cruel, inhuman or degrading treatment, or that they will be judged by a court of special jurisdiction or ad hoc court in the requesting State."

<sup>18</sup> Adopted by Legislative Decision No. 25286 of 12 December 1990.

<sup>19</sup> Adopted by Legislative Decision No. 15014 of 16 April 1964.

<sup>20</sup> Adopted by Legislative Decree No. 957 of July 2004. Book 7 on international cooperation entered into force in February 2006.

<sup>21</sup> An agency of the Ministry of Justice, which is responsible, through the Directorate for Coordination with the Administration of Justice, for handling extraditions, international requests and the transfer of convicted persons, within the framework of its competence (article 75 (c) of the Regulations on the Organization and Functions of the Ministry of Justice – D.S. 019-2001-JUS).

or include evidence indicating to Peru that the person would not be exposed to the danger or certain risk of being subjected to torture or other cruel, inhuman or degrading treatment, then the extradition will not be granted. In this way, the State guarantees that extradition shall take place only within the framework of respect for the human rights of the person extradited.<sup>22</sup>

79. In order to assess the potential risk of the person being subjected to torture in the country of return, the internal legislation of each country must be analysed before the person is handed over, for the sake of verifying compliance with the assurances given regarding the proper administration of justice. Peru must also refer to public and well-known documents from institutions of the human rights protection systems, in order to evaluate any reported irregularities.

80. As mentioned in paragraph 75, the judiciary is involved in Peruvian extradition proceedings through the Supreme Court when the latter issues its advisory resolution, as is the executive, which ultimately decides whether to hand the person over to the requesting country or to deny the request. According to article 515 of the new Code of Criminal Procedure, only if the judiciary issues a resolution advising against extradition (for example, in the light of the risk that the person might be subjected to torture) is the Government bound by that decision, while it holds the power to decide which option it considers preferable if the advisory resolution is in favour of extradition. The extradition procedure is complete when the executive in the exercise of its sovereignty, decides whether or not to hand the person over to the requesting country.

81. Criminal procedure norms do not provide for any appeal against the advisory resolution of the Supreme Court, issued prior to the pronouncement by the executive, on whether or not extradition is appropriate. What is provided for, in the event of a violation or threat of a violation of fundamental rights during extradition proceedings in the event of passive extradition formalities, is an application for constitutional proceedings such as habeas corpus or *amparo*, according to the rules established in the Code of Criminal Procedure.

82. Expulsion is regulated in Peruvian legislation, which is also subordinate to the Constitution and the human rights treaties ratified by Peru. Legislative Decree No. 703, the Aliens Act,<sup>23</sup> outlines the regulations on entry, stay, residence, exit, re-entry and control of foreigners in Peru and regulates their legal status in the country. It establishes that foreigners who violate the provisions of the Act and its implementing regulations are subject to penalties including expulsion (art. 60 (d)), which is admissible (a) for clandestine or fraudulent entry; (b) by order of the competent judicial authority; and (c) for persons who have received penalties of compulsory departure or termination of stay or residence and have not left the national territory.

83. According to article 30 of the Criminal Code, the sentence of restriction of liberty amounts to expulsion in the case of foreigners, which is implemented once the custodial sentence handed down has been served. The director of the penitentiary establishment hands over the foreigner sentenced to expulsion to the competent authority for the execution of the sentence.<sup>24</sup>

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<sup>22</sup> Information received from the National Directorate of Justice in Official Letter No. 500-2010-JUS/DNJ.

<sup>23</sup> Published on 4 November 1991.

<sup>24</sup> Article 118 of the Code of Criminal Enforcement – Legislative Decree No. 654. This is consistent with article 242 of the regulations on the Code of Criminal Enforcement – Supreme Decree No. 015-2003-JUS.

84. Subject to the provisions contained in article 39 of the Criminal Code, the Special Commission for Refugees is the only body competent to decide on the expulsion of a refugee.

85. Expulsion is generally ordered by decision of the Ministry of the Interior, following a report by the Aliens Commission on the basis of a police statement issued by the Aliens Division of the national police in accordance with article 66 of the Aliens Act. Article 67 of that Act provides for the possibility that foreigners who have received an expulsion order may request the reconsideration of or appeal the action taken against them. In such cases, the appeal is filed in accordance with articles 207, paragraph 2, 209 and 211 of Act No. 27444, the Administrative Procedures Act, and is submitted to the Minister of the Interior, who issued the contested decision, and who resolves the appeal, given that he is the highest ranking authority.

86. It should be noted that expulsion proceedings begin with a police report issued by the Aliens Division of the State Security Department of the national police, which is sent to the Migration and Naturalization Directorate of the Ministry of the Interior. Once the report has been received, the foreigners in question make a statement to the police, in which they may indicate whether there is any serious reason to believe that they would be in danger if expelled. Moreover, it is worth noting that foreigners are expelled to bordering countries, where there are no reports of torture.

87. In addition, when there are substantial grounds for believing that the foreigner subject to an expulsion order is in danger of being subjected to torture, the constitutional proceeding of habeas corpus may be invoked. This proceeding may be initiated whenever an action or omission threatens or infringes the right not to be subjected to torture or inhuman or humiliating treatment, in accordance with article 25, paragraph 1, of the Code of Criminal Procedure. The purpose of the proceeding is to protect the right being asserted and revert the situation to the way it was before the right was violated or threatened with violation. The content and scope of this proceeding is interpreted in accordance with the Universal Declaration of Human Rights, human rights treaties, and the decisions of international human rights courts established under treaties to which Peru is a party (article 5 of the Code of Criminal Procedure).

88. Persons subject to expulsion have the right to legal counsel of their own choosing or a public defender at all stages of the proceedings.<sup>25</sup> However, there is no mechanism established specifically for the purpose of evaluating the possible risk of the person under an expulsion order being subjected to torture in the country of return, when the aforementioned legal mechanisms will apply. Moreover, there are no statistical data available on cases in which persons subject to expulsion have claimed a risk of being subjected to torture in the country of return.

89. On the other hand, Peru, as a party to the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees, offers international protection to foreigners who request it in circumstances in which their life, liberty or personal safety are in danger in their country of origin, in accordance with the principle of non-refoulement.

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<sup>25</sup> In reference to free legal aid for persons with limited economic resources, and in the cases set out in the procedural laws, such as in the case of criminal proceedings, in which the public criminal defence service offers advice and legal representation to persons convicted in criminal proceedings. Act No. 29360 and its implementing regulations, Supreme Decree No. 013-2009-JUS.

90. In the same vein, article 5 of Act No. 27891,<sup>26</sup> the Refugee Act, enshrines and develops this principle, stipulating that any person claiming refugee status may enter the country and may not be rejected, returned, expelled, extradited or subjected to any measure that might result in their return to the country where their life, integrity or liberty are threatened for the reasons outlined in article 3 of the aforementioned law. Article 3 (b) of the regulations on the Act<sup>27</sup> further states that persons seeking refuge may remain in the country until the application process has been completed by means of a final decision.

91. There is no mechanism specifically designed to evaluate the risk of the refugee being subjected to torture in the country of origin. However, the Ad Hoc Standing Commission for Refugees of the Ministry of Foreign Affairs receives, studies, processes and resolves applications for recognition of refugee status, periodically reviews the circumstances, decides on treatment, and ensures that all institutions abide by the provisions of the international instruments to which Peru is a party, including the Convention against Torture, in accordance with article 7, paragraph 1, of the Refugee Act.

92. In cases where refugee status is refused, article 17 of the Act establishes the right to appeal to the Special Commission for Refugees for reconsideration, while article 18 covers appeals against the dismissal of that request for reconsideration and determines that the Review Commission for Refugee Affairs is the body that issues the final ruling.<sup>28</sup>

93. Furthermore, article 28 of the implementing regulations of the Refugee Act stipulates that once refugee status has been refused and the relevant remedies have been exhausted, the applicant is subject to the regulations on immigration, without prejudice to the second part of the article, according to which the Ministry of the Interior shall not return persons seeking refugee status to a country in which their life, liberty or personal safety are threatened, subject to the procedure set out in article 26 of the regulations.<sup>29</sup>

94. Act No. 27840,<sup>30</sup> the Asylum Act, aims to regulate the protection provided by the State within its territory to foreigners considered to be persecuted for political reasons or political offences and whose liberty or life is in danger. It thereby establishes in article 3 that no asylum-seeker shall be subject to any measure requiring them to return to a country where their life, physical safety or liberty are at risk.

95. According to article 12 of the implementing regulations of the Act,<sup>31</sup> persons who are denied diplomatic asylum may not be returned without explicit guarantees from the State that their safety is not at risk. The need for diplomatic asylum is assessed by an evaluation group (art. 13), which submits a proposal to the Deputy Minister of Foreign Affairs, who then makes the decision. The same procedure is used for territorial asylum (art. 22). Even if asylum is refused or lost, however, the national authorities do not return applicants to a country where their life, liberty or personal safety are at risk.

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<sup>26</sup> Published on 22 December 2002.

<sup>27</sup> Supreme Decree No. 119-2003-RE, Regulations on the Aliens Act, October 2003.

<sup>28</sup> The Special Commission for Refugees is a multisectoral independent body composed of representatives of the Ministry of Foreign Affairs and the Ministry of the Interior, while the Review Commission for Refugee Affairs is composed of the deputy ministers of foreign affairs, justice and the interior.

<sup>29</sup> Art. 26: "A reasoned decision refusing refugee status may be challenged by the applicants, by their legal representative, or by the Office of the United Nations High Commissioner for Refugees by means of an appeal for reconsideration within 15 working days of the date of notification. The appeal must be resolved within not more than 30 working days."

<sup>30</sup> Published on 27 October 2002.

<sup>31</sup> Supreme Decree No. 092-2005-RE.

96. There have been no reported cases of applications for asylum or refuge in which applicants have alleged a risk of being subjected to torture in the country of return.

### C. Article 4

#### Reply to paragraph 8 of the list of issues

97. Article 321 of the Criminal Code classifies torture as an offence in Peruvian legislation in the following terms:

“An official or public servant, or any person acting with his or her consent or acquiescence, who inflicts upon another serious discomfort or suffering, whether physical or mental, or subjects another to conditions or methods that destroy that person’s personality or impair his or her physical or mental capacity, even without causing physical pain or mental distress, for the purpose of obtaining a confession or information from the victim or a third party, or of punishing the person for any act that he or she may have committed or is suspected of having committed, or of intimidating or coercing him or her, shall be punished by a custodial penalty of not less than 5 and not more than 10 years.

If the torture should result in the victim’s death or cause him or her serious injury and the official could have foreseen that outcome, the custodial penalty shall be, respectively, not less than 8 or more than 20 years, and not less than 6 or more than 12 years.”

98. It may be seen from the above paragraph that the Peruvian legislation criminalizing torture does not incorporate a gender perspective. However, article 321 of the Criminal Code is equally applicable to both men and women. Rape, for its part, is classified as an offence independently of the offence of torture under article 170 of the Criminal Code.<sup>32</sup>

99. In 2007, Bill No. 1707/2007/CR was submitted to Congress, the purpose of which is the implementation in Peruvian legislation of the Rome Statute of the International Criminal Court, which includes rape as a crime against humanity if perpetrated in the

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<sup>32</sup> Art. 170: “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 relationship 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.”

context of a systematic or widespread plan. In addition, the executive branch submitted to Congress a preliminary bill incorporating similar amendments to the Criminal Code.

## **D. Article 10**

### **1. Reply to paragraph 9 of the list of issues**

#### **The national police**

100. The human rights handbook for police staff was adopted through Ministerial Decision No. 1452-2006-IN<sup>33</sup> with the aim of promoting and strengthening the respect for and protection of human rights in the functions and activities carried out by the national police. It is a mandatory tool for the exercise of police duties and for police training and specialization programmes. For this reason, it was ordered that its contents should be disseminated and incorporated as teaching material in the curricula for the various levels of police training. The importance of this tool is that it establishes techniques and procedures for police intervention, and also provides information on theoretical aspects and international human rights instruments. It should be noted that the handbook highlights the message of the Convention against Torture.

101. Following the adoption of the handbook, the signing of a cooperation agreement between the International Committee of the Red Cross and the Ministry of the Interior,<sup>34</sup> and the Government's drive to consolidate knowledge of and compliance with human rights standards among police officers, an annual course was introduced to train instructors in basic techniques and procedures for police intervention within a human rights framework. The course is intended for officers and non-commissioned officers of the national police, and a permanent system is in place to evaluate the participants' knowledge of theoretical and practical aspects. Since 2005 these courses have been conducted annually by the Human Rights Commission of the Ministry of the Interior. In addition, the Permanent Secretariat of the Commission carries out training activities for officers and non-commissioned officers of the national police (see annex 18).

102. Thanks to the agreement signed with the International Committee of the Red Cross, about 300 police instructors have been trained in human rights; more than 20 decentralized training workshops have been held throughout the country, and the guidelines and aide-memoire for police personnel participating in operations to maintain and restore public order were adopted through Vice-Ministerial Decision No. 033-2009-IN/0103.1 of 17 July 2009.<sup>35</sup>

103. It should be noted that through Ministerial Decision No. 0394-2007-IN/0103,<sup>36</sup> the Ministry of the Interior established a register of police observers in United Nations

<sup>33</sup> Of 31 May 2006.

<sup>34</sup> Agreement signed in 2001 with the common interest of disseminating the fundamental human rights principles relevant to police work, training police instructors in human rights, and reviewing the guidelines, training plans and handbooks on operational procedures, adapting them to the standards on the use of force and human rights contained in the international instruments signed and ratified by Peru.

<sup>35</sup> The Ministry of the Interior has also signed other agreements with national human rights bodies such as the Human Rights Commission (COMISEDH) (signed on 25 January 2010) and the Peruvian Institute of Education in Human Rights and Peace (IPEDEHP) (signed on 12 January 2010), with the objective of "uniting efforts to ensure the implementation of human rights training programmes for members of the national police".

<sup>36</sup> Of 7 June 2007.

peacekeeping missions and police instructors in international humanitarian law and international human rights law applied to police work, maintained by the Permanent Secretariat of the National Human Rights Commission of the Ministry of the Interior, in order to have updated information on police instructors in international humanitarian law and international human rights law. This decision is based on the Constitution and on Act No. 27741 establishing compulsory training in human rights and international humanitarian law as part of all training processes and internal regulations of the Ministry of the Interior on training and education for its staff.

### **The Armed Forces**

104. The subject of human rights and international humanitarian law has been included in the curricula of the various courses offered by the navy education and training centres, the training programmes for cadets and students in the academies for officers and non-commissioned officers of the air force, and the schools for the education, training and professional development of officers, technicians, non-commissioned officers, cadets and students of the army. This institution is responsible for teaching human rights and international humanitarian law as part of the general training provided in the basic course for lieutenants and the advanced course for captains. Particular attention is devoted to providing training in these subjects for staff working in less developed areas such as the Valle del Río Apurímac y Ene.

105. The Centre for International Humanitarian Law and Human Rights<sup>37</sup> has also been established as an academic body responsible for instructing civil and military staff of the Armed Forces in matters relating to international humanitarian law and human rights. It is attached to the Ministry of Defence, and its responsibilities include organizing and conducting human rights training programmes for the personnel of the Armed Forces and State institutions. The centre has developed training and dissemination programmes to provide specialized knowledge in matters relating to international humanitarian law and international human rights law for military personnel of the Armed Forces and civilian professionals from the public and private sectors, including courses, seminars and workshops held throughout the country and organized independently or in coordination with other institutions with which cooperation agreements have been signed (see annex 19).

106. Between 2006 and April 2011, a total of 3,320 persons were trained by international humanitarian law and human rights instructors, specialists and promoters. During the same period, training was provided to 32 foreign military staff and 348 civilian professionals from the judiciary, the Public Prosecution Service, universities in Lima and the provinces, provincial municipalities and hospitals (see annex 20).

107. In addition, in March 2011 the National Human Rights Commission, through the Directorate for the Promotion and Dissemination of Human Rights, held a conference workshop entitled “Human Rights, Prison Treatment and Prison Security” for 97 staff members from the Model Ancón II Prison, in order to promote a culture of human rights in the exercise of their duties involving treatment of prisoners and prison security.

108. Furthermore, the National Advanced Studies Centre, an academic institution for higher learning of the defence sector, is responsible for providing instruction and further training in security, development and national defence, and offers postgraduate university programmes for officers of the Armed Forces and national police and for civilian professionals in the area of security, development and national defence, in order to provide

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<sup>37</sup> Article 67 of the Regulations on the Organization and Functions of the Ministry of Defence – Supreme Decree No. 001-2011-DE, amending Supreme Decree No. 001-2008-DE.

them with specialized training. The centre currently offers master's degrees in human rights, international humanitarian law and conflict resolution.

### **National Prison Institute**

109. The National Prison Institute, as the governing body of the national prison system, emphasizes in its curriculum at the National Centre for Criminology and Prison Studies<sup>38</sup> full respect for human rights and the prohibition of all acts of torture, with regard to both treatment and security, by including these topics via a cross-cutting approach to all training provided to staff who look after persons deprived of their liberty. The same emphasis is also given in refresher courses and retraining for staff members.

110. Also, through Presidential Decision No. 411-2008-INPE/P,<sup>39</sup> the National Prison Institute adopted the human rights handbook for prison staff,<sup>40</sup> which is a standard-setting instrument developed by a commission made up of representatives of the National Prison Institute and the Human Rights Commission (COMISEDH), in consultation with the Ombudsman's Office and the International Committee of the Red Cross.

111. The manual "expressly" establishes the prohibition of torture and other cruel, inhuman or degrading treatment against persons deprived of their liberty, emphasizing that prison staff are forbidden either to commit or permit acts of torture in the exercise of their duties.<sup>41</sup> It also provides a clear and understandable explanation of the elements that constitute the offence of torture as classified in the Criminal Code, and draws a distinction between torture and other types of offence such as serious injury and abuse of authority.<sup>42</sup>

112. The National Prison Institute has signed an inter-agency cooperation agreement with the Human Rights Commission (COMISEDH), with the objective of uniting efforts to ensure the implementation of human rights training programmes for the staff of the National Prison Institute and strengthening coordinated efforts to identify factors that increase the risk of human rights violations.

113. In addition, prison staff are trained in topics relating to the use of force on prison staff in application of the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,<sup>43</sup> and other international documents, thanks to the work carried out by several institutions involved in protecting human rights, such as the Ombudsman's Office and the Comisión Episcopal de Acción Social (Episcopal Social Welfare Commission).

<sup>38</sup> The National Centre for Criminology and Prison Studies is a training school of the National Prison Institute responsible for training staff who look after persons deprived of their liberty.

<sup>39</sup> Of 18 July 2008.

<sup>40</sup> At the heart of the handbook is respect for the dignity of persons deprived of their liberty and their human rights. It is divided into the following sections: (1) the theoretical and normative framework for human rights, with regard to the rights and obligations of both persons deprived of their liberty and the staff of the National Prison Institute; (2) the role of security in the prison system, highlighting the balanced relationship between security and the use of force; and (3) a description of the disciplinary system, including principles related to due administrative process and the disciplinary misconduct of persons deprived of their liberty. For more information, see [www2.inpe.gob.pe/portal/files/upload/work/Manual\\_De\\_Derechos\\_Humanos.pdf](http://www2.inpe.gob.pe/portal/files/upload/work/Manual_De_Derechos_Humanos.pdf), available from 23 March 2011. The human rights handbook for prison staff.

<sup>41</sup> *Ibid.*, p. 32.

<sup>42</sup> *Ibid.*, p. 21.

<sup>43</sup> Adopted by the General Assembly in resolution 43/173 of 9 December 1988.

### Public Prosecution Service

114. The Public Prosecution Service promotes the participation of its prosecutors and administrative staff in academic events (including seminars, training workshops and conferences) concerning human rights violations, and has also authorized the participation of the coordinating prosecutor, senior prosecutors, provincial prosecutors, assistant provincial prosecutors and administrative staff of the specialized subsystem, in order to further the training and professional development of prosecutors. Such events were organized by the National Coordinator for Human Rights; the Institute for Democracy and Human Rights of the Pontifical Catholic University of Peru; the Human Rights Commission (COMISEDH); the Peruvian Forensic Anthropology Team; the Ombudsman's Office and other related institutions. In addition, the School of the Public Prosecution Service has conducted academic activities in the fields of human rights, crimes against humanity and torture (see annex 21).

## 2. Reply to paragraph 10 of the list of issues

115. The Institute of Forensic Medicine, an agency of the Public Prosecution Service, is responsible for training staff specialized in the detection and diagnosis of cases of torture. This is achieved through courses, workshops and training seminars, aimed at the improvement and further training of service, technical and administrative staff.

116. Each year the required training courses for the staff of the Institute are submitted to the School of the Public Prosecution Service for approval by the Prosecutor-General of the Nation. In 2008 two events on the subject of torture were organized:<sup>44</sup> an international seminar entitled "International Instruments for the Documentation of Torture and their Implementation in Peru", which saw the participation of international and national expert speakers and 65 attendees from the Institute of Forensic Medicine;<sup>45</sup> and a workshop on the Istanbul Protocol for the documentation of torture, with the participation of Peruvian and Colombian speakers and 65 participants from the Institute of Forensic Medicine.<sup>46</sup>

117. Also, as a mechanism for training the staff of the Institute of Forensic Medicine, in March 2010 a task force<sup>47</sup> was established to draft a protocol on the detection of injuries in living persons resulting from torture. The task force is composed of a multidisciplinary team of professionals: three psychiatrists, three psychologists and two forensic physicians.

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<sup>44</sup> A workshop is planned for August 2011 on medical examinations in cases of torture, to be delivered through both personal attendance and virtual modules.

<sup>45</sup> The programme or contents included: (a) international instruments relating to torture; (b) reports from the Ombudsman's Office on torture in Peru; (c) torture in Peru – legal instruments, legal framework – national mechanism for the prevention of torture; (d) protocol for forensic medical examinations in cases of torture; (e) documentation of torture using the Istanbul Protocol.

<sup>46</sup> The programme or contents included: (a) the Istanbul Protocol: its history, purpose and applicability; (b) preconditions for conducting an expert medical examination; (c) considerations regarding interviews and the interview process; (d) the Istanbul Protocol as a tool for assessing the psychological damage inflicted by torture; (e) the protocol of the Institute of Forensic Medicine for the care of torture victims; (f) contributions from the Istanbul Protocol to the protocol on the documentation of torture used by the Institute of Forensic Medicine; (g) domestic violence and political violence: therapeutic implications of a general model; (h) assessment of the damage inflicted by torture, and the consistency of such assessments; (i) a gender perspective and interculturalism in the Istanbul Protocol; (j) the neutrality of the interviewer; (k) detecting feigned torture; (m) preventing revictimization.

<sup>47</sup> Report No. 1503-2010-M.P.M./S.A.B. and Official Letter No. 0400-2010-MP-FN-IML-GECRIM-DICLIFORD of March 2010.

In addition, a draft guide for dealing with cases of torture has been developed, which is currently being evaluated by the relevant bodies and should soon be adopted.

## **E. Article 11**

### **1. Reply to paragraph 11 of the list of issues**

118. Firstly, it may be noted that the Constitution states that respect for the person and personal dignity is the primary concern of society and the State. In that regard, the introduction of the new Code of Criminal Procedure has led to the implementation of guarantees in the criminal justice system in accordance with the Constitution and international legislation, thereby addressing shortcomings of the previous code, which followed inquisitorial lines. Under the new code, a series of norms regulates the rights of the accused and article 71 stipulates that “the accused shall, with or without the aid of defence counsel, be entitled to assert their rights under the Constitution and the law from the beginning of investigations until the conclusion of trial proceedings”. It expressly establishes the obligation of judges, prosecutors and the national police to inform the accused of their rights immediately and in a comprehensible manner.

119. Under the new Code of Criminal Procedure, a statement to the effect that the rights of the accused have been respected throughout the proceedings must be signed by the accused and a representative of the appropriate authorities (art. 71, para. 3).

120. Other rights of the accused are safeguarded by procedural guarantees under the Constitution and human rights treaties, among them the right not to be subjected to moral, psychological or physical violence, torture, or inhuman or degrading treatment. All forms of ill-treatment are prohibited. It should be noted that a person held in pretrial detention is deprived only of the right to physical freedom and those rights mentioned in the judicial decision.

121. Prison system norms are based on the principle of respect for the dignity of the person and are set out in a handbook on the implementation of human rights in prisons, which was designed to provide a useful tool for the staff of closed prisons. It establishes above all that prison staff may not: commit or permit acts of torture in the performance of their duties; use force against persons deprived of their liberty except when strictly required to do so in order to maintain security and order in penitentiary establishments; or use firearms against persons deprived of their liberty, except in cases of self-defence or the defence of others, or in circumstances where, for instance, lives are threatened or grave injury could be caused.

122. Methods and practices relating to the treatment of persons deprived of their liberty are explained in the handbook, which is ordered by chapters on prison security, the use of force, body searches, crisis management and so on. In that regard, the National Centre for Criminology and Prison Studies attaches considerable significance to the study of human rights in prisons.

123. Between 1 and 31 March 2010, an initial course on human rights in prisons was conducted for National Prison Institute staff by professionals of the International Committee of the Red Cross and the Human Rights Commission (COMISEDH). Upon completion, participants received the title of “human rights instructors”.

124. As far as the national police are concerned and in addition to what is stated in paragraph 99, the Ministry of the Interior’s Directive No. DPNP-17-02-2005-B, of 3 January 2005, aims to establish standards and procedures to be followed by police personnel, to ensure that conditions of detention are decent and that persons held in police

custody are treated humanely, in accordance with the agreement between Peru and the International Committee of the Red Cross regarding visits to detainees.

125. Directive No. DPNP-03-09-2005-B, of 10 February 2005, was issued in order to establish rules and procedures to regulate the actions of the police when offences are committed, including provisions relating to the treatment of persons who are questioned, detained or arrested. Directive No. 001-2006-PNP/CANRPPA, adopted by Ministerial Decision No. 1560-2006-IN, of 28 June 2006, establishes procedures for the investigation of offences in the police jurisdiction of Huacho, which corresponds to the judicial district of Huaura, in the framework of the gradual implementation of the new Code of Criminal Procedure. Directive No. 03-03-2007-PNP/CANRPP, adopted by Ministerial Decision No. 0649-2007-IN/PNP, of 3 September 2007, aims to establish procedures for the investigation of offences by the police in the jurisdiction of the III DIRTEPOL-T, La Libertad judicial district, in the framework of the gradual implementation of the new Code of Criminal Procedure. It should be noted that the new code is not yet in force in all judicial districts.

## 2. Reply to paragraph 12 of the list of issues

126. The National Plan for the Treatment of Prisoners<sup>48</sup> was drafted against the backdrop of the challenge that prison administration poses for a country like Peru. Its aim was to assess the situation in the national prison system and design and implement short-, medium- and long-term policies regarding treatment, security and administration in prisons. The strategic objective is to achieve a holistic approach to the human rights-based treatment of detainees and prisoners, with a view to ensuring their reintegration into society. Although gradual, its implementation has produced a positive outcome in terms of improving prison conditions. Achieving its full implementation, however, represents a challenge that the State will have to meet in coordination with other stakeholders, including the Ministry of Justice, the Ministry of Economy and Finance, the judiciary, the Public Prosecution Service and Congress, through policies on decriminalization, the allocation of financial and human resources, the streamlining of judicial processes and others.

127. The National Prison Institute has issued various decisions of the National Prison Council relating to the treatment of prisoners, including “Prison policies: 2010–2011”, the objectives of which are the re-education, rehabilitation and reintegration of prisoners into society. Its strategy centres on: reducing prison overcrowding; improving prison infrastructure in order to guarantee the security and orderly management of penitentiary establishments; implementing mechanisms to maintain stability in penitentiary establishments; instituting system-wide coordination between prisons; treating prisoners in such a manner as to encourage their return to the labour market; and the reduction of violence.<sup>49</sup>

128. Act No. 29709 on careers in the public prison service, which was promulgated on 17 June 2011, was the first such act aimed at regulating the career structure and system of promotions for prison staff, fostering their professional training and setting forth the rights,

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<sup>48</sup> Adopted by Ministerial Decision No. 343-2002-JUS.

<sup>49</sup> Decision of the National Prison Council No. 0892010 INPE/P-CNP, of January 2010. This document sets out strategies and an assessment of the state of the prison system. The strategy centres on: reducing prison overcrowding; improving prison infrastructure in order to guarantee the security and orderly management of penitentiary establishments; implementing mechanisms to maintain stability in penitentiary establishments; instituting system-wide coordination between prisons; treating prisoners in such a manner as to encourage their return to the labour market; and the reduction of violence.

duties, prohibitions and disciplinary regime applicable to them. Implementing regulations are still being drafted.

129. It is hoped that the Act will resolve shortcomings that have hitherto contributed to a lack of job stability and hindered prison staff in the proper discharge of their duties and, as a consequence, the implementation of the plan.

130. Standard regulations have been established for specific procedures including: rules governing the movement and transfer of detainees around the country;<sup>50</sup> a national directive on prison labour;<sup>51</sup> a guide to good practice with regard to food handling in penitentiary establishments of the National Prison Institute;<sup>52</sup> a procedural manual regulating family visits to prison inmates;<sup>53</sup> the assessment of inmates in ordinary closed prisons at the national level;<sup>54</sup> and a procedural manual on the reception and registration of warrants for arrest.

131. Specific action has also been taken in a number of areas. Work is being carried out gradually to reduce prison overcrowding either through the construction of new facilities, like Ancón Prison (December 2004), which has a capacity for 1,000 inmates under the special closed regime, or the renovation of existing facilities, as in the case of Virgen de Fátima prison (December 2008).

132. New buildings have been added to penitentiary establishments in a number of towns, including Ica, Huacho, Huaráz, Chiclayo, Trujillo and Cañete, in order to house more inmates. In 2010, construction of Ancón II prison, with a capacity for 2,000 inmates, was completed, and work continues on the construction of Chinchá, Huaráz II and Tarapoto penitentiary establishments. The Yurimaguas prison facilities will be refurbished and their capacity increased, and plans are in place for the construction of the following new prison facilities: Río Negro – Satipo; Huanta – Ayacucho; and Zumba – Jaén. Other plans include: the extension of Chimbote prison to increase capacity; the extension and refurbishment of the prison at Tacna – Stage I; the building of kitchen facilities and workshops in Trujillo prison; the extension and complete refurbishment of Pucallpa prison; and the refurbishment of basic services in Cajamarca prison.

133. Another means of reducing prison overcrowding is the concession of presidential pardons. Between 2006 and 31 May 2011, a total of 5,263 presidential pardons were granted (commutation of sentences for Peruvian nationals and foreigners, ordinary pardons and pardons and clemency on humanitarian grounds). A system of electronic surveillance is being put in place for prisoners tried and convicted for minor offences.

134. The reform of criminal procedure in Peru began in July 2006, when the new Code of Criminal Procedure came into force in the judicial district of Huaura as part of the gradual implementation of the new code. This new approach to criminal procedure follows a different logic from that of the old Code of Criminal Procedure, one example being a more rational application of pretrial detention as a precautionary measure depriving accused persons of their liberty in the course of criminal proceedings. One of the aims of the new code is that pretrial detention should be resorted to only exceptionally in cases of strict necessity. This would make it possible to reverse the critical situation in the country's prisons, in which the majority of detainees have not been sentenced. One effect will be that restrictions on the right to personal freedom of movement of citizens facing criminal

<sup>50</sup> Directive No. 009-2003-INPE-OGT, of 30 December 2003.

<sup>51</sup> Directive No. 05-2007-INPE-OGT, of 27 March 2007.

<sup>52</sup> Directive No. 010-2008-INPE, of 28 August 2008.

<sup>53</sup> Directorate Decision No. 022-2008-INPE/12, of 12 August 2008.

<sup>54</sup> Presidential decision No. 484-2010-INPE/P, of 9 June 2010.

proceedings will be applied only exceptionally, in accordance with article 268 of the new Code of Criminal Procedure, thereby putting an end to the excessive use of pretrial detention that has so far been the practice in Peru.

135. The Ministry of the Environment, Ministry of Justice and the Asociación Dignidad Humana y Solidaridad (Association for Human Dignity and Solidarity) have jointly signed a cooperation agreement in support of a project on reforestation, ecology and human development in the Hubert Lanssiers Woods that will contribute to the reintegration of unemployed former prisoners and young offenders sentenced to community work for minor offences, by involving them in reforestation work, agriculture, bee-keeping and other activities compatible with the park's status.

### **3. Reply to paragraph 13 of the list of issues**

136. The data regarding the number of prisons, their capacity and the current size of the prison population, are as follows. In April 2011, 66 penitentiary establishments with a total combined capacity of 27,521 inmates were operating under regional offices around the country. However, in May 2011 the total prison population totalled 48,003.

137. Education and work initiatives implemented by the National Prison Institute, civil society institutions and churches to improve the treatment of inmates in penitentiary establishments around the country have multiplied in recent years, with the ultimate goal of affording them the chance to improve their quality of life through work and study. Of the current prison population, 19,808 inmates work and 10,509 study in prison.

138. A total of 3,007 staff are employed in penitentiary establishments. Staff members responsible for security have a humanist training background that inculcates respect for the dignity of the individual and human rights and strictly prohibits all acts of torture and other cruel, inhuman or degrading treatment.

139. Prison staff currently receive training that includes human rights, not as a one-off course, but rather as an integral component taught throughout the training period. Training is provided by the National Centre for Criminology and Prison Studies.

### **4. Reply to paragraph 14 of the list of issues**

140. As mentioned in paragraphs 131 and 132 above, the issue of prison overcrowding is being addressed gradually through a State policy of prison construction. Another measure aimed at reducing prison overcrowding consists of commuting prison sentences for Peruvian nationals and foreigners, presidential reprieves, ordinary pardons and pardons granted on humanitarian grounds, as mentioned in paragraph 133. Moreover, a system of electronic surveillance is being put in place for prisoners convicted of minor offences.

141. Access to medical staff in the country has improved in recent years with the hiring of more professionals. However, the real need for those services in penitentiary establishments is not yet being fully met. For the country as a whole, a total of 54 doctors are currently available.

142. The services of court-appointed counsel are provided by public defenders (formerly court-appointed defence lawyers) of the Directorate-General of the Public Defender Service, which is part of the Ministry of Justice. One of the duties inherent in the role of public defender is to visit detainees once a week in the penitentiary establishments where they are held. With a view to safeguarding and protecting the rights of persons deprived of their liberty, the Directorate-General has decided to establish offices of the Public Defender Service inside every prison at the national level and to station public defenders in them to provide services to convicted prisoners who either do not have access to a lawyer or cannot

afford to pay fees for counsel. Details of the number of inmates who have used the services of public defenders year on year are provided in annex 22.

**5. Reply to paragraph 15 of the list of issues**

143. In conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners and the National Plan for the Treatment of Prisoners, which recommend that penitentiary establishments be run by civilian authorities, their administration is being devolved to the National Prison Institute by the national police. The process is, however, being slowed down by a lack of available personnel to staff all establishments adequately throughout the country. Nevertheless, every effort is being made to achieve the desired objective. The National Prison Institute has thus taken over the running of several penitentiary establishments, including Miguel Castro prison in Lima, the Women's Annex in Chorrillos prison, and prisons in Puno, Tarapoto and Iquitos.

**6. Reply to paragraph 16 of the list of issues**

144. Yanamayo prison remains open, because the necessary improvements have now been made in order to preserve the personal dignity of its inmates and to ensure that they have access to services.

145. The prison currently houses 329 inmates and employs psychologists, social workers, and legal and medical staff. In addition, work and education opportunities are provided to inmates, along with basic services such as water and electricity. An emergency mobile unit is also stationed there to deal with any situations that may arise.

**7. Reply to paragraph 17 of the list of issues**

146. As mentioned earlier, Directive No. DPNP-17-02-2005-B was issued by the Ministry of the Interior on 3 January 2005 in order to set standards and procedures for national police personnel and to ensure the maintenance of decent conditions of detention and humane treatment for persons held in police custody, in accordance with the agreement between Peru and the International Committee of the Red Cross regarding visits to detainees. The manual on the implementation of human rights in prisons also sets forth rules for the protection of human rights that the national police should follow in the course of carrying out their duties.

147. Independent institutions like the Ombudsman's Office and the Public Prosecution Service play a supervisory role by making periodic inspections in order to ensure compliance with standards and to monitor the conditions of detention in penitentiary establishments and police facilities.

148. The mandate of the Public Prosecution Service, under which it carries out periodic inspections, is regulated by Legislative Decree No. 052, the Organizing Act establishing the Public Prosecution Service (art. 95, para. 8), which stipulates that provincial criminal prosecutors shall carry out inspections of prisons and places of pretrial detention in order to hear the complaints and demands of detainees and convicted prisoners regarding their legal situation and constitutional rights.

149. The mandate of the Ombudsman's Office, under which it carries out periodic inspections, is regulated by the Constitution<sup>55</sup> and by Act No. 26529, the Organizing Act establishing the Ombudsman's Office. In order to enable the office to carry out its mandate,

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<sup>55</sup> Article 162 of the Constitution states: "It is the responsibility of the Ombudsman to safeguard the constitutional and fundamental rights of the individual and the community, and to supervise fulfilment of the duties of the State administration and the performance of public services."

article 16 of the Act establishes an obligation on the part of authorities and public officials to cooperate with the service, which means supplying the information it requests and facilitating its inspections of prisons and police facilities. They must if necessary authorize unannounced inspections made with a view to obtaining any data or information it may require, conducting face-to-face interviews or studying reports, documents, records and whatever else it deems useful for its work. These prerogatives have been extended to the Programme for Criminal and Penitentiary Affairs and the Programme for the Protection of Rights in Police Custody, as well as to outside offices of the Ombudsman.

#### **8. Reply to paragraph 18 of the list of issues**

150. The Code of Criminal Enforcement sets forth disciplinary rules for inmates with a view to organizing their peaceful cohabitation and maintaining order in penitentiary establishments. Solitary confinement is regulated under the code as a disciplinary penalty that is applied only when an inmate is aggressive or violent or repeatedly and seriously disturbs the peace in prison. The maximum length of the penalty is 30 days but it can be extended to not more than 45 days if the inmate commits a disciplinary offence while already in solitary confinement.

151. Solitary confinement is applied in the inmate's usual quarters or in a location decided upon by the prison administration. During the time it lasts, the inmate is entitled to one hour a day in the exercise yard, a fortnightly four-hour visit by no more than one person and access to a priest or pastoral care, or visits from humanitarian institutions. The right to a defence remains unrestricted.

152. The measure remains governed by legal principles and may be applied only where a serious offence is committed (article 66 of the Code of Criminal Enforcement regulations). It is imposed after a hearing during which the inmate is entitled to all guarantees, including administrative remedies to request reconsideration of the penalty or to appeal against it.

153. Pregnant women, women who have given birth in the previous six months, mothers living with their children and persons aged over 60 years may not be placed in solitary confinement. In such cases, the Technical Disciplinary Council must opt for alternative forms of punishment.

154. Highly dangerous civilian inmates tried for or convicted of terrorism offences, treason, offences against the public administration, drug trafficking or crimes against humanity are held in the maximum security prison of the Callao naval base (CEREC) and the conditions of their detention are governed by the prison's regulations (Supreme Decree No. 024-2001-JUS).

#### **F. Article 13**

##### **Reply to paragraph 19 of the list of issues**

155. Air Force Directive FAP 35-4 sets forth procedures to ensure the protection of members of staff engaged in voluntary military service who report acts of torture.

156. Act No. 27378 offers incentives in exchange for effective cooperation in the area of organized crime to persons involved in the perpetration of various offences, including crimes against humanity and torture, as provided for in chapters I to III, title XIV-A, tome II, of the Criminal Code. Article 21 of the Act stipulates the protection measures to which persons are entitled if they cooperate or participate as witnesses, experts or victims in criminal proceedings conducted under the Act.

157. Additionally, in order to put into practice the contents of article 95, paragraph 1 (c), and article 170, paragraph 4, of the new Code of Criminal Procedure, which take greater

account of the needs of crime victims, the Public Prosecution Service has set up the Victim and Witness Assistance Programme. This is regulated by Decision No. 1558-2008-MP-FN of the Prosecutor-General's Office, which contains improvements in the initial regulations approved under Decision No. 053-2008-MP-FN.

158. The programme is aimed at establishing standards and procedures for the provision of assistance by prosecutors to victims and witnesses placed at risk on account of their involvement in an investigation or criminal proceedings. It looks at various measures designed for their protection and well-being, so as to ensure that they may testify and otherwise assist in investigations without fear of reprisals of any kind.

159. In order to implement the programme, the Public Prosecution Service has set up: the Central Victim and Witness Assistance Unit (responsible for running, monitoring and coordinating the implementation of the programme's goals); district units operating in judicial districts where the new Code of Criminal Procedure is already in force (which provide support to prosecutors who grant assistance to victims); and Immediate Assistance Units (which provide support in areas located far from the centres of judicial districts where criminal or mixed prosecution services operate).

160. District units offer the services of a lawyer, psychologist and social worker, while Immediate Assistance Units offer only the services of a lawyer but will gradually also be staffed with psychologists and social workers.

161. Under the programme, victims and witnesses receive legal advice on their rights during investigations and criminal proceedings, and information on the protection measures by the competent authorities to which they may be entitled. Psychological assistance helps them to deal with the potential consequences of the offence, while social workers assess the family and socio-economic situation of victims and witnesses in order to tailor measures to their needs.

162. Altogether 79 Victim and Witness Assistance offices had been opened around the country by 2010, and 26,501 persons were referred to them by prosecutors in 2009–2010. A total of 55,859 actions in the areas of legal, psychological and social assistance have been carried out. Lastly, more than 50 aid networks, supported by public and private institutions, operate around the country, taking on complex cases free of charge which are referred to them by the assistance units and require specialized treatment.

163. For its part, the Ministry of Justice has introduced regulations relating to the protection of witnesses, experts, victims and others who cooperate in criminal investigations, under the provisions of title V of the new Code of Criminal Procedure. These regulations set forth standards, procedures, guidelines and requirements with regard to protection measures for such persons, who might be at risk because of their involvement in criminal proceedings, and provide for the inclusion in such measures of their spouses, partners, parents, children and siblings.

164. Under the regulations (set out in Supreme Decree No. 003-2010-JUS), the Public Prosecution Service is made responsible for the implementation of a comprehensive protection programme for witnesses, experts, victims and collaborators involved in criminal investigations and proceedings. The regulations take immediate effect in judicial districts where the new Code of Criminal Procedure is in force.

165. Protection facilities, ordered either by the courts or upon a party's request, include: police protection; withholding of the person's identity; measures to hinder visual recognition of the person; and the use of mechanical or technological means (such as videoconferences) whenever, in order to safeguard the right of defence of an accused person, it is necessary to reveal his or her identity. Only in exceptional cases are new identity documents issued. Under the regulations, the special investigation, verification and

protection unit of the national police (UECIP), supervised by the prosecutor, is responsible for the provision of protection to beneficiaries.

166. The above regulations also apply to persons who report acts of torture, which constitute criminal offences, and protection mechanisms are activated if the reporting person is at risk of being subjected to intimidation or reprisals, since there are no special measures benefiting torture victims (neither in terms of security measures nor of personnel to apply them).

## **G. Article 14**

### **1. Reply to paragraph 20 of the list of issues**

167. The National Human Rights Plan<sup>56</sup> is a national policy tool used to determine the measures required to bring about the promotion and protection of human rights in the most effective manner between State bodies. At the same time it seeks to ensure that national legislation and practices are in line with Peru's international human rights obligations. In the Plan, Section OE2 of LE1 (of the strategic objectives) calls for the implementation of the recommendations of the final report of the Truth and Reconciliation Commission, in accordance with the guidelines of the expected results for that objective.

#### **Strengthening of the judicial subsystem for the investigation, trial and punishment of human rights crimes and violations**

168. Under the specialized human rights subsystem<sup>57</sup> the National Criminal Division was made responsible for trying crimes against humanity, ordinary offences involving human rights violations and related offences. Organizational improvements were made in order to ensure that these types of offences were given due attention. The National Criminal Division has five collegiate courts (each comprising three magistrates), two of whom deal exclusively with trials for these types of offences and have nationwide competence (collegiate courts A and B).<sup>58</sup>

169. At the second level up, four supra provincial criminal courts based in Lima exercise nationwide jurisdiction to try the above offences.<sup>59</sup> In addition, owing to the complexity of proceedings before the subsystem, the time elapsed after incidents have occurred and the fact that the majority of cases of human rights violations took place in the departments of

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<sup>56</sup> The National Human Rights Plan was adopted on 10 December 2005 by Supreme Decree No. 017-2005-JUS. It was extended until December 2011 under Supreme Decree No. 021-2010-JUS of 29 December 2010. The Plan was drafted by the National Human Rights Council in the light of guidelines on human rights established by the United Nations. It was made available at [www.minjus.gob.pe/cndh/index.asp](http://www.minjus.gob.pe/cndh/index.asp) on 9 June 2011.

<sup>57</sup> Administrative Decision No. 170-2004-CE-PJ.

<sup>58</sup> Administrative Decision No. 094-2009-CE-PJ. The other three collegiate courts (C, D and E) are responsible for judging cases relating to: terrorism offences; in the context of national and international organizations, illegal trafficking in drugs, extortion and kidnapping; money laundering; human smuggling; commercial sexual exploitation of children and adolescents; child pornography; manufacture, sale and possession of chemical weapons; in the context of national and international organizations, the use, production and transfer of anti-personnel mines and illegal trafficking in persons, when perpetrated by criminal organizations; as well as homicide, murder, grievous bodily harm, kidnapping and extortion perpetrated against journalists in the course of their duties.

<sup>59</sup> Administrative Decision No. 060-2005-CE-PJ and Administrative Decision No. 075-2005-CE-PJ. These courts also try and investigate the same offences as collegiate courts C, D and E.

Junín,<sup>60</sup> Ayacucho<sup>61</sup> and Huánuco, supra provincial criminal courts were set up in these three judicial districts. These have exclusive jurisdiction within their district for the trials of crimes against humanity, ordinary offences involving the violation of human rights and related offences. At the highest level, the subsystem is capped by two criminal divisions of the Supreme Court of Justice.

170. The specialized human rights subsystem falls under the powers and competences conferred on the National Criminal Division, which tries crimes against humanity, ordinary offences involving human rights violations and related offences, with collegiate and other courts specializing exclusive in that area.

171. Between 2006 and February 2011, 48 persons were given sentences by the National Criminal Division for violations of human rights, while 150 persons were acquitted on the same charges. In the same period, judgements were handed down in 62 cases by the National Criminal Division for human rights violations. At present, 28 human rights cases are pending before the National Criminal Division and 24 before the four supra provincial criminal courts.

172. Specialized prosecutors' offices and the National Criminal Prosecutor's Office were set up in the Public Prosecution Service with jurisdiction to try these crimes. At the lowest level there are 13 provincial prosecutors' offices with competence in human rights;<sup>62</sup> four supra provincial criminal prosecutors' offices in Lima; the First and Second Supra Provincial Criminal Prosecutor's Office of Ayacucho;<sup>63</sup> the Supra Provincial Criminal Prosecutor's Office of Pichari – Ayacucho;<sup>64</sup> the Supra Provincial Criminal Prosecutor's Office of Huancavelica;<sup>65</sup> and the Provincial Prosecutor's Office specializing in crimes of terrorism and crimes against humanity of Huánuco.<sup>66</sup> At the level above, there are three national criminal prosecutors' offices, which together make up the National Criminal Prosecutor's Office, while the two Supreme Criminal Prosecutors' Offices act as the highest authority.

173. The Institute of Forensic Medicine has extended its capacity with regard to the search for missing persons and the exhumation of unmarked graves. In order to facilitate coordination with the Institute of Forensic Medicine, the Coordinating Office of the National Criminal Prosecutor's Office and the supra provincial criminal prosecutors' offices have instructed public prosecutors to submit quarterly reports regarding progress made and plans for forensic anthropological interventions.

#### **Provision of a system to protect victims, witnesses, judges, public prosecutors and other persons involved in trials for human rights violations**

174. Title V of the New Peruvian Code of Procedure establishes protection measures for witnesses, experts, victims and collaborators who are involved in criminal proceedings. As part of the implementation of the Code, The Victim and Witness Assistance Programme was created under the responsibility of the Public Prosecution Service, which undertook to

<sup>60</sup> Under Administrative Decision No. 094-2009-CE-PJ, criminal courts were established in Junín and Huánuco judicial districts.

<sup>61</sup> Administrative Decision No. 170-2004-CE-PJ.

<sup>62</sup> Decision No. 1602-2005-MP-FN of the Prosecutor-General's Office.

<sup>63</sup> With the same competences as the four supra provincial criminal prosecutors' offices of Lima (Decision No. 1602-2005-MP-FN of the Prosecutor-General's Office).

<sup>64</sup> Decision No. 065-2009-MP-FN-JFS of the Board of Senior Government Procurators.

<sup>65</sup> Decision No. 041-2007-MP-FN-JFS of the Board of Senior Government Procurators.

<sup>66</sup> Decision No. 017-2008-MP-FN of the Board of Senior Government Procurators.

launch the Comprehensive Programme to protect witnesses, experts, victims and collaborators who are involved in investigations and criminal proceedings.

175. As already mentioned, Act No. 27378 establishes general protection measures which apply to collaborators, witnesses, experts and victims taking part in criminal proceedings that involve trials for crimes against humanity, as set out in Book 2, Title XIV-A, Chapters I, II and III of the Criminal Code.

176. Bill No. 175/2006-CR is designed to overcome several problems encountered in the enactment of Act No. 27378, outlined in report No. 139 of the Ombudsman's Office, "Five years of justice and redress in Peru. Overview and outstanding challenges".

**Drafting and implementation of a National Plan for Forensic Anthropological Investigations, to serve as a guide for identifying victims and constituting evidence for the prosecution of cases of human rights violations in the country**

177. The specialized forensic team of the Institute of Forensic Medicine has drawn up a draft National Plan for Forensic Anthropological Interventions, which has the approval of the coordinating office of the National Criminal Prosecutor's Office and the supra provincial criminal prosecutors' offices. The draft has also been sent to the Prosecutor-General's Office for approval.

178. During the period 2002 to 2010, the specialized forensic team succeeded in recovering 1,579 individuals, of whom 804 were identified, while 660 human remains were returned to their families.

179. However, certain problems still impede the identification of human remains, such as the difficulty of obtaining the genetic samples of relatives for various reasons (such as distance, ignorance of proceedings, the assumption that the relative is in another place, etc.). To solve these problems, in 2010 the Institute submitted a proposal to the International Cooperation Division of the Public Prosecution Service, to allow it to acquire the necessary computer inputs and programmes to handle and process genetic data. However, funding for the project is not yet forthcoming.

**Finalization of the military justice reform process, establishing the limits and prerogatives of its jurisdiction on the basis of the jurisprudence of the Inter-American Court of Human Rights and the Constitutional Court**

180. The Military and Police Justice system<sup>67</sup> is governed by Act No. 29182, on the organization and functions of the military and police system of justice, amended by Legislative Decree No. 1096,<sup>68</sup> the regulations governing the Act, which were approved by Administrative Decision No. 066-2009-TSMP/SG,<sup>69</sup> and the regulations applicable to career progression and access to the military and police magistracy, approved by Administrative Decision No. 130-2010-TSMP/SG.<sup>70</sup> In accordance with the constitution, the jurisprudence of the Inter-American Court of Human Rights and the Constitutional Court and current rules, neither civilians nor military personnel may be tried in military courts for ordinary offences or crimes against humanity (see paragraphs 30 to 32).

181. Legislative Decree No. 961, the Code of Military Justice, was promulgated in 2006. A charge of unconstitutionality was submitted against it and the Constitutional Court

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<sup>67</sup> 10 January 2008.

<sup>68</sup> 31 August 2010.

<sup>69</sup> 12 May 2009.

<sup>70</sup> 20 December 2010.

declared some 30 articles unconstitutional.<sup>71</sup> In August 2010, legislative Decree No. 1094, the Military and Police Criminal Code, was promulgated. This sets out the guidelines of criminal proceedings for military personnel and the offences for which they may be investigated or punished.<sup>72</sup>

**Advances in the implementation of the Comprehensive Reparations Plan (PIR) (RE 1) and strengthening of the High-level Multisectoral Commission (RE 4)**

182. The Comprehensive Reparations Plan was approved by Act No. 28592, which established the plan in July 2005. The normative and procedural framework of the plan were approved by Supreme Decree No. 015-2006-JUS, as amended by Supreme Decrees Nos. 003-2008-JUS, 047-2010-PCM and 051-2011-PCM.

183. The High-level Multisectoral Commission<sup>73</sup> was created in 2004 as the body charged with coordinating and monitoring State actions and policies in the areas of peace, collective reparations and national reconciliation. In 2006, the Central Register of Victims<sup>74</sup> was established under the responsibility of the Reparations Council, a collegiate body which classifies victims of the violence that occurred in the period 1980–2000 and designates the beneficiaries of reparations. The aim of Act No. 28592 was to strengthen the Multisectoral Commission by instructing it to draft individual and collective programmes,<sup>75</sup> and at the sectoral, regional and local levels, to coordinate and supervise the implementation of the Comprehensive Reparations Plan through its executive secretariat. The implementation of the plan was facilitated by the transfer of the Commission to the Office of the President of the Council of Ministers, the establishment of the Reparations Council and the implementation of the Central Register of Victims.

184. In terms of funding, for the period 2004–2005, a budget of 10 million nuevos soles was earmarked for the implementation of the Plan. In the fiscal year 2006, the budget was 45 million nuevos soles, of which 1 million was allocated to the Census for Peace, a programme run by the Ministry of Women and Social Development. Over the period 2007 to 2011, the sum of 189,951,269.57 nuevos soles was assigned to finance reparation activities as part of the implementation of Comprehensive Reparations Plan programmes.

185. The Comprehensive Reparations Plan considers reparation programmes for: the restoration of civil rights, education, health, better access to housing, and symbolic, economic and collective rights. The plan applies, as appropriate, to individual victims (direct and indirect) and/or collective victims (peasant and native communities and other populated areas) affected by violence.

<sup>71</sup> Constitutional Court ruling No. 00012-2006-PI/TC.

<sup>72</sup> This Legislative Decree still governs proceedings initiated prior to the entry into force of Legislative Decree No. 1094.

<sup>73</sup> Supreme Decree No. 011-2004-PCM, amended by Supreme Decrees Nos. 024-2004-PCM, 035-2005-PCM and 062-2006-PCM.

<sup>74</sup> Article 68 of the regulations governing Act No. 28592 defines the Central Register of Victims “as a public, inclusive and permanent national instrument, which all persons, groups and communities may apply to if they wish to be considered victims of violence”. The Register can lead to the identification of victims of violence, who, either individually, as a group or as a community, are entitled to benefit from actions of the Comprehensive Reparations Plan.

<sup>75</sup> Supreme Decree No. 011-2004-PCM set up the Commission under the authority of the Office of the President of the Council of Ministers. Supreme Decree No. 082-2005-PCM modified its status by transferring it to the Ministry of Justice. Then under Supreme Decree No. 062-2006-PCM the Commission was once again attached to the Office of the President of the Council of Ministers, with an extended membership.

186. Over the reporting period, the implementation of the various reparation programmes was coordinated and monitored at the intersectoral and intergovernmental levels, as shown in the table below.

	2005	2006	2007	2008	2009	2010	2011	Total
Appropriation	10 000 000	45 000 000	40 000 000	40 000 000	40 000 000	40 000 000	40 000 000	<b>255 000 000</b>
Collective Reparations Programme			40 000 000	40 000 000	40 000 000	40 000 000	20 000 000	<b>180 000 000</b>
Economic Reparations Programme							20 000 000	<b>20 000 000</b>
Other Entities	10 000 000	45 000 000						<b>55 000 000</b>
Disbursed	10 000 000	45 000 000	28 775 729.36	37 136 345.13	52 416 037.90	27 959 753.95	19 993 805.87	<b>221 281 672.21</b>

#### *Health reparations programme*

187. The High-level Multisectoral Commission approved the guidelines for the implementation of the Health Reparations Programme, which sets out the specific health reparations policy of the Ministry of Health and the government departments involved. Supreme Decree No. 006-2006-SA was issued to cater for beneficiaries of these kinds of reparations. The Decree was subsequently amended by Supreme Decree No. 015-2006-SA, which extended health services under the comprehensive health insurance scheme to scattered and excluded groups in the Andean highlands and the Amazon region, to victims of social violence (such as women subjected to forced sterilization), victims of the political violence that prevailed between 1980 and 2000, and community health workers. Coverage was extended to mental, cancer and other health services. This allows beneficiaries of the Comprehensive Reparations Plan to be treated as a target group in the health establishments of the Ministry of Health.

188. In March 2011, the comprehensive health insurance scheme covered the registration nationwide of 29,012 persons insured as target groups in connection with the violence which beset the country. This figure includes: 16,964 victims of violence in the period 1980 to 2000; 151 women subjected to forced sterilizations; 1,149 charges dropped; and 10,748 who benefited from the recommendation of the Inter-American Court of Human Rights.

189. As part of the Comprehensive Reparations Plan and the National Mental Health and Culture of Peace Strategy, the Ministry of Health started operations with mobile teams in four designated areas (Ayacucho, Huancavelica, Apurímac and Cusco). In 2006, the teams were made permanent and included professionals such as psychiatrists, psychologists and nurses. Activities were extended to the departments of Ucayali, San Martín, Puno, Pasco, Huánuco and Junín, and in 2009 to Ancash, Cajamarca and La Libertad.

190. Similarly, the National Mental Health Plan and the Coordinated National Health Plan 2007–2020 have given priority attention to victims of political violence.<sup>76</sup> Also, the national mental health and culture of peace strategy, for its initiatives to counter violence, has 11 permanent teams within the framework of the Comprehensive Reparations Plan, engaged in 351 target communities (providing training, full recovery through community

<sup>76</sup> In the former case, care has also been differentiated according to social strata, sex, age and cultural diversity.

action, full recovery through clinical action, health promotion and prevention). For more details on health reparations, see annex 23.

#### *Educational reparations*

191. The regulations governing the Act relating to the Comprehensive Reparations Plan, as approved by Supreme Decree No. 015-2006-JUS, set restrictions on the modalities and beneficiaries of the Educational Reparations Programme. They also set limits as regards higher education, and the possibility of agreements being signed between the High-level Multisectoral Commission and public university and technical institutions. As a result of these limitations, only minimal advances were made over the period 2006–2010.

192. Nevertheless, this year (2011), with Supreme Decree No. 047-2011-PCM, the regulations applicable to Act No. 28592<sup>77</sup> were modified, by including as beneficiaries, in addition to those who had interrupted their studies, the relatives of individual victims who had not necessarily interrupted their studies, such as the children of victims who had died or disappeared, and the offspring born of rape victims. Under the programme, provisions were also included to keep vacancies open and grant fee exemptions for academic degrees.

193. So far, seven universities have taken account of victims of violence: two universities have granted them direct entry; five have set aside vacancies; and six universities have waived academic fees. The national police academy offers candidates exemptions on enrolment fees and a medical check-up. Starting with 2012 entries, public universities throughout the country will set aside vacancies for potential beneficiaries as part of their regulations and guidance for admission.

#### *Programme to restore rights*

194. The National Registry of Identification and Civil Status issued national identity cards to persons living in areas considered to be exposed to high or very high levels of violence. However, these activities were carried out as part of the registry's routine duties and not deliberately to support victims of violence.

#### *Programme to promote and facilitate access to housing*

195. Supreme Decree No. 003-2009-VIVIENDA established the Mi Lote (my plot) programme to develop urban housing projects on State-owned land, with the aim of contributing to the housing needs of least privileged persons on urban property which has been physically and legally rehabilitated for housing use. The annex of the operating regulations governing the programme, approved by Ministerial Decision No. 180-2009-VIVIENDA, establishes a points system, allocating an additional 10-point advantage for victims of human rights violations (including the head of a family or dependants who were recognized victims of terrorism; the head of a family who lost a spouse and/or dependants as a result of terrorist acts; or the head of a family who lost one or both parents due to terrorist acts and who, when the acts took place, had been dependant on them, provided that the individual's status has been recognized by the competent authority).

#### *Symbolic reparations programme*

196. In Ministerial Decision No. 187-2007-PCM, the Book of the Heroic Peoples of the Nation was launched with the aim of recognizing and promoting communities which played an active role in the pacification of the country and in the defence of democracy and the

<sup>77</sup> 24 May 2011.

rule of law. Guidelines on preparations for the book were approved in Ministerial Decision No. 363-2010-PCM.

#### *Collective reparations programme*

197. The objective of the collective reparations programme is to contribute to the reconstruction of the social, institutional, material and economic-productive capital of rural and urban families and communities affected by violence.<sup>78</sup> It involves budgeting 100,000 nuevos soles for new individual projects selected by communities affected by violence. The local authority<sup>79</sup> of the area concerned<sup>80</sup> is made responsible for implementing the projects.

198. By May 2011, through the implementation of 1,628 projects and a total investment of 189,963,390.29 nuevos soles, the programme has assisted 1,605 communities and benefited 749,038 inhabitants. The programme has thus disbursed resources worth a total of 159,643,936.35 nuevos soles through 463 local government authorities (see annex 24).

199. In Supreme Decree No. 071-2006-EM of December 2006, the format of the agreement entitled the Mining Programme for Solidarity with the People was approved for signing by the State and the mining companies, to provide additional, temporary economic assistance on a voluntary basis. Under the agreement, as of 2007 and for a further four consecutive years, mining companies agree to allocate a percentage of their profits to voluntary, additional and temporary aid in order to improve the living conditions of people in areas impacted by their mining activities. The aid consists of a regional and local fund. From 2007 to 2011, 39 mining companies party to the above-mentioned agreement, together with the State, paid in a sum of 15,293,006.39 nuevos soles to the account for collective reparations held by the Office of the President of the Council of Ministers, thereby helping to fund the Comprehensive Reparations Plan.

200. The Collective Reparations Programme has encouraged the communities receiving assistance to participate actively by setting up Community Surveillance Committees, which fulfil a social monitoring role. In this way, 8,360 citizens, 20 per cent of whom are women, have been trained in community management and monitoring skills.

#### *Economic reparations*

201. In October 2010, the Multisectoral Technical Commission was established to draw up guidelines and methodologies to determine amounts, procedures and conditions for the Economic Reparations Programme payments. In January 2011, this Commission submitted its final report, which approved the guidelines for the programme on the basis of three studies set out in its annexes: an analysis of the Central Register of Victims to determine the number of victims entitled to reparations; the beneficiaries' expectations of economic reparations; and an assessment of the effects of violence with an estimate of economic reparations.

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<sup>78</sup> Article 25 of the regulations governing Act No. 28592, as approved by Supreme Decree No. 015-2006-JUS.

<sup>79</sup> Generally, the district municipality.

<sup>80</sup> The Collective Reparations Programme takes the degree of impact as a criterion for defining the scale of intervention. Highly-populated areas are also taken into account, in relation to all departments, provinces and districts affected by violence. Each year the High-level Multisectoral Commission sets out priorities among populated areas, using as sources of information the database of the Census for Peace, book 2 of the Central Register of Victims, data from the National Institute of Statistics and Informatics on population counts for 2007, the Commission's archives, and, when necessary, coordination with local authorities of the affected zones.

202. By 31 May 2011,<sup>81</sup> 26,416 victims and 57,522 relatives who were beneficiaries of the Economic Reparations Programme had been registered in book 1 of the Central Register of Victims. As regards the degree of impact, 18,403 victims were killed, 5,972 disappeared, 1,536 were victims of sexual violence and 505 were left with disabilities.

203. In the current tax year 2011, 20 million nuevos soles have been earmarked to initiate the economic reparations process.

204. According to Supreme Decree No. 051-2011-PCM of 16 June 2011, the figure for economic reparations will stand at 10,000 nuevos soles for each victim of disappearance, person killed, victim of sexual violence and victim left with disabilities, in line with the regulations governing Act No. 28592. This rule, which marks the launch of the first stage in the implementation of economic reparations, is intended to give priority to elderly beneficiaries. It also establishes that the process for determining and identifying beneficiaries of the Economic Reparations Programme, as set out in article 41 of the regulations governing Act No. 28592, will end on 31 December 2011.

205. The procedures and conditions of payment of the programme were approved in Ministerial Decision No. 184-2011-PCM.

**Approval and implementation of the regulations of the Reparations Council, establishing its independence and the powers and resources required for it to fulfil the mandate conferred on it to take charge of the Central Register of Victims**

206. Under Ministerial Decision No. 373-2006-PCM,<sup>82</sup> seven members of the Reparations Council were placed in charge of the Central Register of Victims, while Ministerial Decision No. 068-2009-PCM<sup>83</sup> changed the composition of the Council. Its members carry out their functions on a voluntary basis, with the assistance of a technical secretariat, currently consisting of a technical secretary and a team of 28 professionals. The budget for the Reparations Council complies with the rules applying to the public sector.

207. Since October 2006, in the first year and a half of work, the focus was on the organization of the Council itself and the establishment of the Central Register of Victims. Between 2008 and 2010, territorial deployment strategies were implemented, which enabled the Council to achieve national coverage. In 2011, the Central Register has become fully operational, leading to large-scale registration, processing and entry of individual victims and collective beneficiaries.

**Implementation of the Central Register of Victims**

208. The Central Register of Victims is divided into books 1 and 2 depending on whether it concerns individual victims and beneficiaries or communities, groups and collective beneficiaries (communities and organized groups of non-returning displaced persons). The Office of the President of the Council of Ministers allocated the following budgets: for 2007, 2,370,000 nuevos soles; 2008, 5,511,367 nuevos soles; 2009, 3,974,388 nuevos soles; and 2010, 3,455,194 nuevos soles. In 2011, the allocation received by the Reparations Council stood at 1,242,477 nuevos soles, which is intended to cover institutional operations only until October 2011.

209. As of April 2011, there were 116,396 individual victims registered in book 1. In book 2, there were 5,671 communities and populated areas affected by violence and 20

<sup>81</sup> Available at: <http://www.registrodevictimtas.gob.pe/> as from 13 July 2001.

<sup>82</sup> Of 20 October 2006.

<sup>83</sup> Of 12 February 2009.

organized groups of non-returning displaced persons. Altogether, 51,633 certificates were issued (48,513 from book 1 and 3,120 from book 2).

## 2. Reply to paragraph 21 of the list of issues

210. Article 92 of the Criminal Code determines civil reparations and sentences for each offence. In addition, the New Peruvian Code of Procedure has attempted to raise the status of victims and recognition of their rights in criminal proceedings, in this case as a civil party. As a result victims are given certain powers and rights during the trial and the execution of the sentence. Title IV, Chapter II of the Criminal Code thus grants them powers to bring criminal indemnification proceedings to protect their rights, while article 493, paragraph 1, establishes that while the sentence is being served, civil reparations shall take effect in accordance with the Code of Civil Procedure, with the participation of the provincial prosecutor and of the civil party.

211. The judiciary notes that Peru has made progress with regard to protecting the right to reparations of victims of torture and other cruel, inhuman or degrading treatment, in parallel with the prosecution of complaints by the Truth and Reconciliation Commission. The amounts allocated to victims for civil reparation have been established in conformity with the norms of the Code of Civil Procedure and with the principle of proportionality according to the facts of each case (see annex 25).

212. It should be noted that in two of the latest convictions for torture,<sup>84</sup> the National Criminal Court ruled that the victims should be given free physical and mental health care until they were fully recovered. These verdicts show that the State is pursuing a policy of full reparations for victims of torture.

213. The Inter-American Court of Human Rights has issued 25 convictions against the Peruvian State, invoking its international responsibility for human rights violations. Some of the convictions were against violations of the right to personal integrity as enshrined in article 5.1 of the American Convention on Human Rights, or for violations of article 5.2 of the same Convention, regarding the prohibition of torture and other cruel, inhuman or degrading treatment or punishment by State officials (see annex 26).

214. The full reparations for victims and their relatives decided by the Inter-American Court of Human Rights in those verdicts include: rehabilitation measures to eliminate the negative effects allegedly caused by the violation of rights; the payment of compensation for material or moral injury; study grants; health care for victims' families (rehabilitation and redress); and provisions designed to provide moral reparations and avoid the future recurrence of events prejudicial to human rights.

215. Peru has gradually been adopting a number of the requirement set out by the Inter-American Court of Human Rights with regard to reparations,<sup>85</sup> subject to a few outstanding points awaiting compliance. Moreover, a court specializing in the enforcement of supranational sentences has been established under Administrative Decision No. 089-2010-CE-PJ.

216. In 2010, three cases involving the violation by Peru of article 7 of the International Covenant on Civil and Political Rights were registered by the United Nations Human Rights Committee (*K.N.L.H.*, *Antonino Vargas Mas* and *Marlem Carranza Alegre*).

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<sup>84</sup> Cases Nos. 09-05 and 22-08 of the National Criminal Court.

<sup>85</sup> For further information supplied by the State on the execution of rulings, see: [http://www.corteidh.or.cr/pais.cfm?id\\_Pais=8](http://www.corteidh.or.cr/pais.cfm?id_Pais=8). Revised on 12 June 2011.

### 3. Reply to paragraph 22 of the list of issues

217. Since Peru has no specialized programme of medical and psychological care or rehabilitation for victims of torture, there are no records showing the number of torture victims benefiting from health programmes.

218. The Ministry of Health has been providing medical health services for victims of the internal armed conflict under the Comprehensive Reparations Plan and the comprehensive health insurance scheme.<sup>86</sup> Torture victims, however, are eligible for this programme under the general heading of victims of internal armed conflict, even though no special provision is made for them.

219. In view of this gap, NGOs are making an effort to assist torture victims, both those affected during the internal armed conflict and cases arising since 2000. Particular mention should be made of NGOs such as the Centro de Atención Psicosocial (Psychosocial Care Centre), Red para la Infancia y la Familia (Childhood and Family Network), the Comisión Episcopal de Acción Social (Episcopal Commission for Social Action), Paz y Esperanza (Peace and Hope), the Estudio para la Defensa de los Derechos de la Mujer (Defence of Women's Rights), Wiñastin and the Comisión de Salud Mental de Ayacucho (Mental Health Commission of Ayacucho). The latter NGO is based in Ayacucho, where health care is provided for persons affected by political violence, including victims of torture and their families.

220. The Psychosocial Care Centre has assisted victims of torture and their families since 1994 under the Comprehensive Programme for the Care of Victims of Torture, supported by the United Nations Voluntary Fund for Victims of Torture. The centre focuses on the psychosocial aspect of the treatment and rehabilitation of victims of torture. Their services include medical and psychological treatment, social work and physiotherapy.

221. The centre has treated 281 individuals claiming to have been victims of torture,<sup>87</sup> 55 per cent of whom were men and 45 per cent women. The centre also catered for 1,227 immediate family members of torture victims or disappeared persons due to action by State employees.

222. The Human Rights Commission (COMISEDH) has also offered full assistance to victims of torture and other cruel treatment, by providing medical and psychological care, social assistance and legal aid. The Commission is supported by various institutions such as the Ombudsman's Office and experts and offers financial support, generally in cases where victims have been left with permanent physical after-effects. Similarly, it also offers support for the start-up of small undertakings that allow victims and their families to support themselves.

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<sup>86</sup> Article 24 of the regulations governing the Comprehensive Reparations Plan: "The comprehensive health insurance scheme covers individual beneficiaries suffering from a physical and/or mental problem, first and foremost persons with either a partial or total permanent disability resulting from sexual violence, *torture*, wounds or injuries sustained from violence, and proven by the relevant parties. Individual beneficiaries shall be added to the comprehensive health insurance scheme and enjoy free provision of medicine from the State through the pharmacies of public hospitals and health-care centres in case of outpatient treatment within the framework of the insurance scheme. In addition, medicines to treat complex illnesses shall be provided free of charge, when the disorder results from a violent act."

<sup>87</sup> In the period 2005 to 2009.

## H. Article 15

### Reply to paragraph 23 of the list of issues

223. Article 2, paragraph 24 (h), of the Constitution, which prohibits torture and cruel, inhuman or degrading treatment, also establishes that statements obtained through violence are invalid and that whoever resorts to violence incurs responsibility therefore.

224. In article VIII of the Preliminary Heading, the New Peruvian Code of Procedure ratifies that evidence obtained, directly or indirectly, in violation of the core content of the fundamental rights of the person shall be without legal effect. It also emphasizes that evidence of any kind is deemed valid only if it has been obtained and incorporated into criminal proceedings through a constitutionally legitimate procedure. The same text prohibits judges from directly or indirectly using sources or forms of evidence obtained through a violation of the core content of the fundamental rights of the person. Information obtained by means of torture therefore has no probative value and is deemed totally invalid.

225. A conviction handed down on the basis of a confession obtained through torture is subject to appeal for annulment under section V of book IV of the New Peruvian Code of Procedure, which applies when a sentence or judicial writ has been issued contrary to any of the constitutional guarantees regarding matters of procedure or substance (art. 429, para. 1), under the conditions and within the limitations established in said Code, specifically as a violation of the right of all persons for statements obtained through violence to be considered invalid.

226. Section VII of book IV of the Code allows for convictions to be overturned, regardless of time lapsed and only in the convicted person's favour, if it is shown that any evidence that was decisive in sentencing lacked probative value because it was false, invalid, altered or fabricated (art. 439, para. 3). The Constitution of Peru establishes explicitly that statements obtained by means of violence are not valid.

## I. Article 16

### Reply to paragraph 24 of the list of issues

227. The Criminal Code establishes which acts constitute a violation of sexual freedom and integrity in their various and aggravated forms. The Ministry of Education, through Ministerial Decision No. 0405-2007-ED of 10 September 2007, approved the rules for taking action in cases of physical and/or psychological abuse, sexual harassment or violation of the sexual freedom of students in educational institutions. The purpose of the rules is to establish complementary guidelines and procedures for filing and handling complaints in the event of physical and/or psychological abuse, sexual harassment and/or the violation of the sexual freedom of students by senior or middle management personnel in educational institutions, whether they be teaching or administrative staff. The directive on procedures for the prevention and punishment of sexual harassment in the education sector was approved under Ministerial Decision No. 0201-2009-ED.

228. Also, it is the official policy of the Public Prosecution Service to prosecute all offences properly and effectively, including those that infringe on sexual freedom or integrity. Special public outreach events are therefore held to identify the main problems affecting the population as regards crime, insecurity and victimization. Work plans are drawn up for each area on the basis of the information obtained at such events, and these lead to the organization of talks that inform, educate and advise men, women and children about crime prevention.

229. The Ministry of Women and Social Development has implemented the National Programme to Combat Domestic and Sexual Violence<sup>88</sup> as a mechanism for implementing the 2009–2015 National Plan to Combat Violence against Women.<sup>89</sup> The goal of the Programme is to design and implement care, prevention and support policies and activities at the national level for persons affected by domestic and sexual violence. The Programme's services are provided through women's emergency centres, 114 of which had been established across the country by December 2010.<sup>90</sup>

230. Preventive action under the programme is taken through the Comprehensive Prevention Plan to Combat Domestic and Sexual Violence. Training, mobilization and outreach activities are arranged, and these provide information on all forms of domestic and sexual violence in accordance with the context in which each centre operates. The emphasis is placed on women, girls and adolescents, but the male public is not overlooked.

231. This action revolves around the following types of activities: the political lobbying of local and regional governments and public bodies, together with pro-equality educational activities, especially in schools, to raise awareness and improve State action, and the mobilization of communities and activities to increase citizens' participation in raising awareness and public condemnation of the problem; the establishment of committees and organization of meetings in different parts of the country; and the involvement of the media in communication for development.

232. As a result of this action, 52,030 events promoting messages aimed at preventing domestic and sexual violence were held in the period 2005–2009, providing information to 2,539,573 people.

233. Educational activities included the launch of the outreach-teacher training programme in 2004, which has facilitated the prevention, detection and follow-up of cases of students who are subjected to domestic and/or sexual violence. In 2004–2009, 1,500 outreach-teachers were trained under the programme. Local education management units and regional education directorates in the provinces issued 62 directives between 2006 and 2009 ordering the implementation of preventive activities in classrooms.

234. With regard to services for victims of sexual violence, the Technical Comprehensive Services Unit of the National Programme to Combat Domestic and Sexual Violence handles, defends and assists with sexual violence complaints free of charge with a view to ensuring the criminal prosecution of perpetrators of such violence. These services are provided through the women's emergency centres, which forward expert analyses and studies as evidence to the corresponding body in the justice system to help further investigations.

235. In 2006–2010, the women's emergency centres responded to 19,241 cases of sexual, psychological and physical violence. Specialized services were provided on 2,247,134

<sup>88</sup> Supreme Decree No. 008-2001-PROMUDEH. The National Programme to Combat Domestic and Sexual Violence was incorporated into the organizational structure of the Ministry of Women and Social Development.

<sup>89</sup> Approved by Supreme Decree No. 003-2009-MIMDES. This follows on from the National Plan to Combat Violence against Women for 2002–2007, which establishes State policy and action for eliminating violence against women.

<sup>90</sup> The women's emergency centres specifically aim to combat domestic and sexual violence. They provide free interdisciplinary advisory services to victims, through a holistic approach to victim support, which includes legal counselling as well as psychological and social support. The centres also organize awareness and information campaigns in their respective communities. Strategic alliances have been established between the centres and various counterparts, including provincial, local and regional governments, charity organizations and parishes.

occasions; preventive action was taken 62,017 times; awareness-raising activities were provided to 3,093,097 people; 63,860 telephone enquiries (made using free telephone lines) were fielded; 423 perpetrators were dealt with, and 423 cases of femicide or attempted femicide were handled.

236. The programme has yet to take action regarding women deprived of their liberty and adolescent girls who have committed criminal offences.

237. Regular visits are another means of preventing sexual violence in prisons. These are currently made by representatives of the Public Prosecution Service and the judiciary. Representatives of the Office of the Ombudsman also make regular visits to prisons and police detention centres. The objective of these visits is to channel allegations of torture and ill-treatment to the competent authorities.

238. The Santa Margarita Centre for Young Offenders, which is the only youth facility for girl offenders in the country houses girls who have been tried and convicted for committing an offence.<sup>91</sup> The reports made by the Public Prosecution Service of its unannounced inspections of the facility show that the girls are protected against all forms of physical, psychological, mental and sexual abuse, and no cases involving allegations of sexual violence in the centre have ever been recorded.<sup>92</sup>

## **J. Various articles**

### **1. Reply to paragraph 25 of the list of issues**

239. The State of Peru approved the Option Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the “Optional Protocol”) through Legislative Decision No. 28833 of 23 July 2006 and ratified it through Supreme Decree No. 044-2006-RE on 25 July 2006. The instrument of ratification was deposited on 14 September 2006, whereby the Protocol entered into force on 14 October 2006, i.e. 30 days later, as stipulated in article 28 of the Optional Protocol.

240. Several activities have been carried out to meet the commitments assumed under the Optional Protocol. One of the first initiatives was announced at the second session of the Working Group on the Universal Periodic Review of the United Nations Human Rights Council (held in May 2008), at which the Minister of Justice, Rosario Fernández Figueroa, stated that one of the commitments that the State had voluntarily assumed was to fulfil its obligations under the Optional Protocol.

241. Since then, the National Human Rights Council has been studying the best way to implement the mechanism. At the Council’s extraordinary session No. 03-2010 of 1 June 2010, it was agreed, through the Office of the President of the Council, to recommend to the executive that the Office of the Ombudsman should be designated as the entity responsible for implementing the national preventive mechanism in Peru. This agreement was the outcome of a debate held within the Council. Accordingly, the Council, through a working group comprising members of the executive, the Public Prosecution Service, the Ombudsman’s Office and civil society, drew up a bill on the creation and designation of the national mechanism to prevent torture and other cruel, inhuman and degrading treatment, designating the Office of the Ombudsman as the agency responsible for the mechanism’s

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<sup>91</sup> According to the Children’s and Adolescents’ Code (Act No. 27337, as amended by Legislative Decree No. 990), only adolescents between the ages of 14 and 18 may be tried and convicted for a criminal offence. Such acts are subject to socio-educational rather than punitive measures.

<sup>92</sup> Document No. 416-2011-CJSM-GC/PJ of the Santa Margarita Centre for Young Offenders of 31 May 2011.

implementation. The text of the bill was approved by the members of the Council in December 2010. The bill is currently being discussed in inter-ministerial consultations prior to its submission for approval at a meeting of the Council of Ministers and subsequent referral to Congress.

242. Particularly noteworthy is the action taken by the Public Prosecution Service, the judiciary and the Ombudsman's Office to channel allegations of torture and ill-treatment in the course of the regular visits they make to places of detention.

## **2. Reply to paragraph 26 of the list of issues**

243. The ruling handed down by the Constitutional Court in case No. 010-2002-AI/TC represented a change in antiterrorism legislation. On the basis of the ruling, a series of new laws were passed bringing about substantial changes in the processing of persons who had been convicted of terrorism offences and their terms of imprisonment.

244. These are: Legislative Decree No. 921, which establishes the rules for imposing life sentences and maximum penalties for the offences specifically covered by the articles declared unconstitutional under the aforementioned ruling; Legislative Decree No. 922, on the annulment of the trials held for crimes of treason; Legislative Decree No. 923, which enhances the organization and workings of State defence services in terrorism cases; Legislative Decree No. 924, which adds a paragraph to article 316 of the Criminal Code on the apology of crimes of terrorism; Legislative Decree No. 925, on effective collaboration for combating terrorism-related crime; Legislative Decree No. 926, on the annulment of the proceedings in the terrorism cases tried before judges and prosecutors whose identities were kept secret and without defendants having recourse to appeal; and Legislative Decree No. 927, on the criminal prosecution of terrorism offences. This set of laws marked a major step forward towards bringing domestic antiterrorism legislation into line with international human rights standards.

245. In keeping with the recommendation of the United Nations Security Council regarding the need to combat terrorism through its financing, the Office of the Superintendent of Banking and Insurance<sup>93</sup> issued Decision No. 486-2008, whereby regulations were passed to prevent money laundering and the financing of terrorism, by appointing the entity to which all agents covered by the regulations whose activities are not monitored by supervisory bodies must report.

## **3. Reply to paragraph 27 of the list of issues**

246. There is no legislation that explicitly prevents or prohibits the production, commercialization, import, export or use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. However, the State, through Legislative Decree No. 1017, the Public Contracts and Procurement Act and the budget regulations in force, is obliged to acquire or produce what it needs to fulfil its aims. But no legislation stipulates that the infliction of torture or other cruel, inhuman or degrading treatment is one of the State's aims.

247. Licences to produce and trade in goods in the private sector are granted under municipal ordinances and according to the regulations of the Ministry of Production. These in turn must uphold the Constitution, which explicitly prohibits torture.

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<sup>93</sup> Superintendencia de Banca y Seguros (SBS).

**4. Reply to paragraph 28 of the list of issues**

248. This report was circulated among the various agencies that form part of the National Human Rights Council and represent civil society, such as the Peruvian Episcopal Conference, the National Evangelical Council and the National Coordinator for Human Rights.

**5. Reply to paragraph 29 of the list of issues**

249. The National Human Rights Council has published the most recent periodic report submitted to the Committee (CAT/C/61/Add.2) on its website ([www.minjus.gob.pe/cndh/informes\\_periodicos\\_nu.html](http://www.minjus.gob.pe/cndh/informes_periodicos_nu.html)), together with the Committee's concluding observations (CAT/C/PER/CO/4), so that they may be consulted online.

250. Official notifications of the concluding observations were also sent to all the member institutions of the Council, as well as to all the agencies whose work is closely related to the matters covered by the Convention,<sup>94</sup> in order to pass on the Committee's proposals and ensure that the competent authorities pursue their activities in compliance with its recommendations.

251. Also, the documents mentioned in the preceding paragraph were circulated among 33 public officials from various government agencies at the workshop held to draft this report, as well as among the members of the Armed Forces and the national police who participated in the workshop.

**K. General information on the national human rights situation, including new measures relating to the implementation of the Convention****1. Reply to paragraph 30 of the list of issues**

252. In addition to the jurisprudence developed by the National Criminal Court, the case law of the Constitutional Court and the Supreme Court are worthy of mention. The ruling of the Constitutional Court in case No. 2333-2004-HC/TC develops the defence of the right to integrity of the person and the prohibition of all forms of physical, psychological and moral abuse (article 2, paragraph 1, of the Constitution), given the particular importance of these issues in Peru. The right is thus extended to cover three types of integrity: physical, psychological and moral.<sup>95</sup>

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<sup>94</sup> The following agencies were officially notified: the Office of the President of the Council of Ministers, the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence, the Ministry for Women and Social Development, the Ministry of Health, the Ministry of Education, the Ministry of the Environment, the Ministry of Labour and Promotion of Employment, the Ministry of Energy and Mines, the Judiciary, the Public Prosecution Service, the National Prison Institute, the Institute of Forensic Medicine, the Office of the Ombudsman, the Peruvian Episcopal Conference, the National Evangelical Council and the National Coordinator for Human Rights.

<sup>95</sup> The ruling in question states that "Physical integrity presupposes the right to conserve one's bodily structure as a human being and, consequently, to preserve the form, disposition and functioning of one's bodily organs and bodily health in general. With regard to moral integrity, the ruling states that "The right to moral integrity refers to the protection of the fundamentals of a person's action as regards his or her existence and social coexistence. These fundamentals reflect the set of basic and primary human obligations derived from the dictates of one's conscience and the conditioning of that conscience by one's educational and cultural environment." Finally, with respect to psychological integrity, the ruling states that "The right to psychological integrity refers to the preservation of motor, emotional and intellectual abilities. It therefore guarantees respect for the psychological and

253. The ruling also established that torture was essentially different from inhuman and degrading treatment on account of the intensity of the damage it caused the victim. In other words, the hallmarks of torture are the infliction of particularly intense, severe and cruel suffering and the magnitude of the sequelae it leaves behind. The set of circumstances surrounding each case (duration of the affliction, sex, age, state of health, etc.) must therefore be taken into account for an act to be classified as torture.

254. In the case of inhuman, degrading or humiliating treatment, the injurious action “[...] diminishes a person’s dignity, in other words, discredits the victim’s human condition, by instilling in the victim fear, anguish and a sense of inferiority in order to debase the person and destroy his or her natural capacity to offer physical, psychological or moral resistance”.

255. The Supreme Court, for its part, through the First Transitory Criminal Chamber, developed the definition of cruel treatment in the *Alberto Fujimori Fujimori* case.<sup>96</sup> Cruel treatment was defined as an act that deliberately produces pain and suffering but which, in terms of intensity, is not severe enough to be classified as torture or the infliction of bodily harm. The seriousness and harmfulness of an act, according to international jurisprudence, must be appraised according to the internal and external factors of the case in question.

256. Finally, it should be noted that in the last two rulings on torture cases,<sup>97</sup> the National Criminal Court stipulated that the victims must receive free mental and physical health care to treat the harm inflicted until they have made a full recovery. These rulings show that the State has been ensuring comprehensive reparation for victims in torture cases.

## 2. Reply to paragraph 31 of the list of issues

257. The Government has introduced the first National Human Rights Plan,<sup>98</sup> which, as mentioned above, is a national policy instrument that outlines the measures that need to be taken to coordinate the promotion and protection of human rights more effectively among State agencies. The results of the monitoring and follow-up of the Plan are currently being assessed and a report is being prepared.

258. The executive, in Supreme Decree No. 027-2007-PCM, set forth and established mandatory national policies for government agencies, with a view to ensuring, among other

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reasoning components of a person, such as his or her approach to a way of being, personality, character, temperament and the lucidity to know and judge the inner and outer worlds of the human being.”

<sup>96</sup> Supreme Court of Justice, First Transitory Criminal Chamber, Case No. 19-20001-09-A.V, of 30 December 2009, pp. 191–192. “Cruel treatment is an aggravating circumstance that should add to the penalty with respect to any conduct involving the deprivation of liberty of a person and can be defined as any act that deliberately produces pain and suffering but which, in terms of intensity, is not severe enough to be classified as torture or the infliction of bodily harm.

In that regard, cruelty always involves two elements: an objective one that is apparent in the unnecessary nature of the suffering; and a subjective one that refers to the intentions or desire of the perpetrator to cause unnecessary pain to the victim. Both must be present and must be duly appraised to determine the existence of cruelty in any of its manifestations, such as cruel treatment of a kidnap victim, which is considered an aggravating circumstance.

In short, cruel treatment must be seen as an act that deliberately produces pain and suffering but which, in terms of intensity, is not severe enough to be classified as torture or the infliction of bodily harm. The seriousness and harmfulness of an act, according to international jurisprudence, must be appraised according to the internal and external factors of the case in question.”

<sup>97</sup> Case No. 09-05 and case No. 22-08 of the National Criminal Court.

<sup>98</sup> The National Human Rights Plan for 2006–2010 was approved on 10 December 2005 under Supreme Decree No. 017-2005-JUS. The Plan was prepared by the National Human Rights Council on the basis of United Nations guidelines on human rights issues.

results, the promotion of equal rights for men and women, young people, Andean peoples, Amazonian peoples, Afro-Peruvians, Asian Peruvians and persons with disabilities.

259. The national police and the National Prison Institute both have human rights handbooks. For its part, the Ministry of Defence has a text known as the “Decalogue of the forces of law and order”, which is a compilation of the basic norms that must be borne in mind and adhered to in any situation or circumstance to ensure that human rights are respected and guaranteed at all times in any action undertaken by the forces of law and order. The Ministry also has a handbook on international humanitarian law and human rights.<sup>99</sup>

260. The Public Prosecution Service, through Decision No. 1485-2005-MP-FN of the Prosecutor-General’s Office of 8 July 2005, set up the Crime Observatory of the Public Prosecution Service, the goal of which is to provide objective and comparable information on all crime-related variables to make it possible to monitor and control all aspects of crime, from initial action to sentencing, with a view to developing better policies and actions for fighting crime. The Observatory has already produced statistics broken down by judicial district and province, which is making it possible to implement targeted crime-prevention policies that address the most common crimes in a given geographical area.

### **3. Reply to paragraph 32 of the list of issues**

261. As mentioned in paragraphs 239 to 241, the Government approved and ratified the Optional Protocol to the Convention and is working on implementing the national preventive mechanism.

262. The election of Mr. Felipe Villavicencio Terreros as a member of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was an important and noteworthy event given that his nomination was the result of a consensus reached among the members and civil society representatives of the National Human Rights Council. This achievement demonstrates the willingness of the Peruvian Government to cooperate with the treaty bodies of the United Nations on the effective fulfilment of their mandates and obligations and to collaborate actively with the mechanisms established to prevent torture and other cruel, inhuman or degrading treatment in the States parties.

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<sup>99</sup> Approved through Vice-Ministerial Decision No. 049-2010/DE/VDP of 21 May 2010.