

Concluding observations on the combined fifth and sixth periodic reports of Peru, adopted by the Committee at its forty-nine session (29 October - 23 November 2012)

ADVANCE UNEDITED VERSION

1. The Committee against Torture considered the combined fifth and sixth periodic reports of Peru (CAT/C/PER/5-6) at its 1096th and 1099th meetings, held on 30 and 31 October 2012 (CAT/C/SR.1096 and CAT/C/SR.1099), and adopted the following concluding observations at its 1121st, 1122nd and 1123rd meetings (CAT/C/SR.1121, CAT/C/SR.1122 and CAT/C/SR.1123) held on 15 and 16 November 2012.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its sixth periodic report by providing detailed replies to the list of issues (CAT/C/PER/Q/6), as it improves the cooperation between the State party and the Committee and focuses the examination of the report as well as the dialogue with the delegation.

3. The Committee also appreciates the open and constructive dialogue with the high-level delegation of the State party and the supplementary information supplied.

B. Positive aspects

4. The Committee welcomes that, since the consideration of the fourth periodic report, the State party ratified or acceded to the following international instruments:

(a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, on 14 September 2006;

(b) Convention on the Rights of Persons with Disabilities, on 30 January 2008;

(c) Optional Protocol to the Convention on the Rights of Persons with Disabilities, on 30 January 2008;

(d) International Convention for the Protection of All Persons from Enforced Disappearance, on 26 September 2012.

5. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:

(a) Entry into force in July 2006 of the new Code of Criminal Procedure, adopted by Legislative Decree No. 957 of July 2004;

(b) Approval by Act No. 28592 of the Comprehensive Reparations Plan, in July 2005;

(c) Incorporation of the crime femicide in article 107 of the Criminal Code;

(d) Repeal on 15 September 2010 of Legislative Decree No. 1097 that stipulated that the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity would only apply as of 9 November 2003;

(e) Adoption of Refugee Law No. 27891 of 20 December 2002.

6. The Committee also welcomes the efforts of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

(a) Establishment of a specialized judicial subsystem under the Public Prosecutor's Office and the Judiciary to prosecute human rights violations committed during the internal armed conflict;

(b) Establishment in 2006 of the Central Register of Victims under the responsibility of the Reparations Council;

(c) Adoption of the National Mental Health Plan and of the Coordinated National Health Plan 2007-2020 which gives priority attention to victims of political violence;

(d) Establishment in October 2010 of the Multisectoral Technical Commission to draw up guidelines and methodologies to determine amounts, procedures and conditions for the Economic Reparations Programme payments;

(e) Establishment on 7 December 2011 of a Vice-Ministry for Human Rights and Access to Justice within the Ministry of Justice;

(f) Establishment of the Special Commission on Refugees (CEPR);

(g) Adoption of the Second National Action Plan to Combat Violence against Women 2009-2015;

(h) Adoption of the National Action Plan to Combat Trafficking in Persons 2011-2016;

(i) Adoption of the National Human Rights Plan of Action 2012-2016.

C. Principal subjects of concern and recommendations

Definition of torture

7. The Committee is concerned that the definition of torture in the Criminal Code does not include discrimination of any kind as one of its elements (arts. 1 and 4).

The Committee recommends that the State party amend its Criminal Code to include a definition of torture that covers all the elements contained in article 1 of the Convention.

Allegations of torture and ill-treatment, fundamental legal safeguards

8. The Committee takes note of the information from the State Party on numerous allegations of torture and ill-treatment in custody by law enforcement and security officials, but is concerned at the lack of thorough investigations and the small number of convictions under national law. The Committee is concerned that while charges were raised in the case of Mr. Gerson Falla, who died in custody 48 hours after being beaten in detention, no conviction has been pronounced and no one held responsible. The Committee is also concerned that the fundamental legal safeguards for persons detained by police are not always respected and regrets the absence of a specific registry for cases of torture and cruel, inhuman or degrading treatment and punishment. The Committee is further concerned at reports about violence by law enforcement personnel in the context of apprehension. There

seems to be no regular assessments of cases of torture allegations based on The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) of detained persons (arts. 2, 10, 12, 13 and 14).

The State party should take effective measures to:

(a) Conduct prompt, impartial and effective investigations of all reports of torture and ill-treatment, bring perpetrators to justice and punish them with appropriate penalties;

(b) Ensure that persons deprived of their liberty enjoy fundamental legal safeguards from the very outset of their detention and have recourse to an independent complaints procedure;

(c) Ensure that law enforcement personnel are trained in professional techniques which minimize any risk of harm to apprehended persons;

(d) Establish a specific registry for cases of torture and cruel, inhuman or degrading treatment and punishment;

(e) Ensure that the Istanbul Protocol is made a mandatory part of the training for all medical professionals involved in the documentation and investigation of allegations of torture and ill-treatment in order to permit proper diagnosing of signs of torture.

Pre-trial detention

9. The Committee is concerned that some 60% of all detainees are in pre-trial detention some of which may last up to 36 months, which contributes to the overcrowding in detention centres throughout the country (arts. 2, 11 and 16).

The State party should take prompt steps to restrict the use of pre-trial detention as well as its duration, using alternative measures to imprisonment in line with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules).

Conditions of detention

10. The Committee is concerned at information about the conditions in detention centres including overcrowding at 114%, deteriorated infrastructure, including food and temperature, poor sanitary conditions and only 54 doctors to cover the entire prison population. In particular, the Committee expresses concern at the conditions in the high-security prison at the Callao naval base with prolonged solitary confinement, sensory isolation, prohibition to communicate and half-hour family visits once a month, and at the conditions in the Challapalca and Yanamayo detention centres (arts. 2, 11 and 16).

The State party should:

(a) Take immediate steps to reduce overcrowding in places of detention, including by the application of alternatives to imprisonment;

(b) Adopt reasonable time frames for the construction of new prisons and the expansion and renovation of existing places of detention;

(c) Ensure that there are sufficient medical professionals, including mental health professionals, in places of detention;

(d) Use solitary confinement as a last resort, for as short a time as possible, with the possibility of judicial control;

(e) **Ensure that the prisoners in the high-security prison in Callao are treated in conformity with the United Nations Standard Minimum Rules for the Treatment of Prisoners;**

(f) **Consider closing the Challapalca and Yanamayo penitentiary centres.**

Designation of a national preventive mechanism

11. The Committee is very concerned that six years after its accession to the Optional Protocol to the Convention, the State party has still not set up the national preventive mechanism (art. 2).

The State party should without further delay establish the national preventive mechanism in full compliance with the Optional Protocol and in particular grant it sufficient financial, human and material resources in order to assume its mandate effectively.

Use of force

12. The Committee is concerned at allegations of excessive and disproportionate use of force, including firearms, by the national police and armed forces during social protests as well as arrests of human rights defenders, lawyers, representatives of the Ombudsman and members of the indigenous population during such situations and that to date there have been no convictions regarding the incidents in Bagua, Celendín or Bambamarca (arts. 2, 10, 12, 13 and 16).

The State party should:

(a) **Ensure that law enforcement officials receive training on the absolute prohibition of torture, and on international standards on the use of force and firearms, including on the liabilities in cases of excessive use of force;**

(b) **Expedite the investigation and prosecution of such cases and sanction officials found guilty of such offences with appropriate penalties.**

States of emergency

13. The Committee is concerned at the frequent imposition of states of emergency, during which restrictions on human rights may give rise to violations of the Convention and that state of emergency has been imposed in relation to peaceful social protests. The Committee is further concerned at the promulgation on 1 September 2010 of Legislative Decree No. 1095 allowing military courts to decide on cases of excessive use of force and human rights violations during state of emergency (art. 2).

The State party should limit the imposition of state of emergency to situations in which it is strictly necessary, and at all times respect the provisions of the Convention stating that no exceptional circumstances may be invoked as a justification of torture. The State party should consider amending Legislative Decree No. 1095 with a view to bringing all its provisions in line with the State party obligation under the Convention.

Violence against women

14. The Committee is concerned at reports on widespread violence against women and girls, including domestic and sexual violence and femicide, and at the low numbers of investigations and prosecutions in such cases, as well as the lack of statistics on sexual violence. While taking note of the adoption of the Second National Action Plan to Combat Violence Against Women 2009-2015, the Committee is concerned that domestic violence and forms of sexual violence and harassment, other than the crime of rape are not defined

as offences in the Criminal Code and at the obstacles victims of violence face when accessing justice, combined with the insufficient number of shelters available to them (arts. 2, 12, 13 and 16).

The State party should intensify its efforts and urgently ensure implementation of effective protective measures to prevent and combat all forms of violence against women and girls and amend its legislation to include domestic violence and forms of sexual violence as offences under the Criminal Code, as is the case with rape, and develop a better overview on the prevalence of the offence. The State should further strengthen all efforts to prevent violence against women, enhance the access of victims to justice, ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, perpetrators brought to justice and victims provided with redress. The State party should set up not only an effective complaints mechanism for women and girls but also a monitoring mechanism to prevent all forms of violence against them. The Ministry of Health should provide specialized training to health personnel dealing with victims of violence and a single, consolidated system for keeping records on cases of violence against women should be established. Broad awareness-raising campaigns should be initiated and training on combating and preventing violence against women and girls for law enforcement officers, judges, lawyers, and social workers should be provided.

Reproductive rights and health

15. The Committee is seriously concerned that illegal abortions are one of the main causes of high maternal mortality in the State party and that the interpretation of therapeutic and legal abortion in cases of medical necessity is too restrictive and lacks clarity, leading women to seek unsafe illegal abortions. The Committee is particularly concerned at the criminalization of abortions in cases of rape and incest as well as the prohibition by the Constitutional Court of the distribution of oral emergency contraception to victims of rape. It is further concerned at the fact that the existing law obliges physicians to bring information on women resorting to post-abortion health services to the attention of the authorities and thus to investigation and criminal prosecution, which creates such fear of punishment that, in practice, this constitutes a denial of legal abortion services. The Committee is also concerned at the forced sterilization of women, namely the 2.000 women who were subjected to forced sterilizations under the National Reproductive Health and Family Planning Program between 1996 and 2000, and who have not yet received redress (arts. 2, 10, 12, 13, 14, 15 and 16).

The State party should review its legislation with a view to:

- (a) Amend the general prohibition for cases of therapeutic abortion and pregnancy resulting from rape and incest and provide free health coverage in cases of rape;**
- (b) Legalize the distribution of oral emergency contraception to victims of rape;**
- (c) Ensure that health professionals are aware of and informed about the protocols regarding legal abortions by the Ministry of Health and guarantee immediate and unconditional treatment for persons seeking emergency medical care;**
- (d) Eliminate the practice of extracting confessions for prosecution purposes from women seeking emergency medical care as a result of illegal abortion and penalizing medical personnel for the exercise of their professional responsibilities;**

(e) **Enhance its provisions of family planning information and services and conduct a broad public campaign to raise awareness about cases when therapeutic abortions are legal and the administrative framework to access them.**

The State party should accelerate all current investigations related to forced sterilisation, initiate prompt, impartial and effective investigations of all similar cases and provide adequate redress to all victims of forced sterilisation.

Impunity for acts of torture and ill-treatment during the internal armed conflict

16. The Committee is gravely concerned at the slow progress of establishing accountability for the estimated 70,000 deaths or enforced disappearances during the internal armed conflict from 1980 to 2000, and at the very small number of convictions and high rate of acquittals in cases prosecuted. It is further concerned at the slow pace of exhumations, identification of and return of bodies to their relatives and the scarcity of qualified personnel. It is also concerned at the requirement by the National Criminal Court that evidence be direct and documentary, and its unwillingness to credit the testimony of victims or their relatives. The Committee is seriously concerned at the absence of full cooperation of the Ministry of Defence to furnish information relevant for the investigations, including lists of army officers present in patrols and army bases in different regions affected by the conflict, and to inform on the aliases and code names frequently used by military officials. While taking note of the introduction of the Victim and Witness Assistance Programme and acknowledging the challenges and difficulties, the Committee is concerned that lack of effective implementation prevents courts from obtaining testimonies and that there are no special measures to protect victims of torture. It is concerned further at the under-reporting of cases of sexual violence against women and girls during the armed conflict, the limited number of investigations, the absence of sentences and the lack of effective redress to victims of sexual violence during the conflict. It is also concerned that rape is the only form of sexual violence that may give rise to individual economic compensation under Law No. 28592 and that all forms of sexual violence are not covered by the law on reparation. The Committee takes note that the State party ratified the Rome Statute in 2001, but is concerned that Bill No. 1707/2007/CR on rape as a crime against humanity, was submitted to Congress in 2007 but has not been passed to date (arts. 2, 12, 13, 14 and 16).

The State party should enhance its efforts to investigate, prosecute and bring to justice the perpetrators of human rights violations, including torture, during the internal armed conflict and ensure the access to truth, justice and compensation for victims. It should strengthen the capacity of the specialized judicial subsystem established for this purpose to conduct trials in an impartial, public and transparent manner, in accordance with international law. It also recommends that the Institute for Legal Medicine enhance its specialized forensic teams to accelerate the exhumations and analysis of human remains, their identification and handing over to relatives. The Committee urges the Ministry of Defence to cooperate with the prosecutors and judges and invites the National Criminal Court to reconsider its criteria for obtaining evidence in cases of human rights violations. Witnesses and victims should be protected and provided with sufficient financial resources under the witness protection programme. The State party should enhance the investigation and prosecution of all cases of human rights violations committed during the armed conflict, including sexual violence, and provide redress to victims. All forms of sexual violence should be included in national legislation prohibiting torture and Law No. 28592 should be enacted in order to allow for individual economic compensation for such crimes. The Committee recommends that the State party expedite the implementation of the Rome Statute in national legislation.

Comprehensive Reparation Plan

17. While taking note of the introduction of the Comprehensive Reparation Plan and the establishment of the Central Register of Victims concerning reparation for victims of violence during the internal armed conflict from 1980 to 2000, the Committee is concerned that Supreme Decree No. 051-2011-PCM will be implemented to close the Central Register of Victims in spite of some 28,000 outstanding files requiring evaluation under the Economic Reparation Programme. The Committee is also concerned at the insufficient amount of economic reparation and at the slow pace of payments (art. 14).

The Committee recommends that:

(a) The Reparation Council remains open and ensure that the Central Register of Victims continues the process for determining and identifying beneficiaries of the Economic Reparation Programme and amend article 41 of the regulations governing Act No. 28592 accordingly;

(b) Allocation is made for sufficient financial and human resources required for the full and timely implementation of the Comprehensive Reparation Plan and that an increase in the amount of economic reparation is made which should cover all the persons concerned.

Medical and psychological care for victims of torture

18. While noting that torture victims of the internal armed conflict are entitled to receive health services under the Comprehensive Reparation Plan and the comprehensive health insurance scheme and that the National Criminal Court has ruled in recent cases of torture that victims of torture should be given free physical and mental health care until they were fully recovered, the Committee is concerned that the plan is far from being fully implemented, that there is no specialized programme of medical and psychological care or rehabilitation for victims of torture and that there are no records showing the number of torture victims benefiting from health programmes. The Committee is further concerned at the limited use of manuals developed to assess psychological sequelae of torture. A rehabilitation programme should also be provided for post-conflict victims of torture (art. 14).

The State party should ensure that:

(a) Public policies regarding full and complete redress to victims of torture and ill-treatment be fully developed and disseminated, including the provision of such specialized services in individual cases as may be necessary regardless of geographical location, the socio-economic situation of victims, gender, and real or perceived affiliation with current or former opposition groups;

(b) Specialized services that are provided are of a sufficient quality to enable all victims of torture to achieve as full rehabilitation as possible. These services should take into account holistic rehabilitation methodologies such as combination of medical and psychological care as well as legal, social, community and family-based, vocational, educational services, and interim economic and re-integration support and that services are available for that purpose in all parts of the country;

(c) The recently adopted manual for evaluation of psychological effects of torture by the *Fiscalía de la Nación* is implemented; and

(d) A database is set up on the number of victims of torture, both from the period of the internal armed conflict and the post-2000 period, who have benefitted from health programmes.

The Committee draws the attention of the State party to the recently adopted General Comment (CAT/C/GC/3) on article 14 of the Convention which explains the content and scope of the obligations of States parties to provide full redress to victims of torture.

Persons with disabilities

19. The Committee is concerned at reports of violent and discriminatory practices against persons with disabilities in medical settings, including minors, deprivation of liberty, without access to basic legal safeguards, and the use of restraint, as well as the continuous enforced administration of treatments such as Electro Convulsive Therapy. The Committee welcomes the suspension of the technical norm for Family Planning 536/2005-MINSA, of 26 July 2005, which permits persons with “mental incompetence” to be sterilized without their free and informed consent, but remains concerned that the decree is not repealed (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party adopt the draft bill on the rights of persons with disabilities, submitted to the Congress in March 2011, and ensure that all legal safeguards for people in institutions are respected, urges the State party to promptly, effectively and impartially investigate all instances of ill-treatment, and to prosecute those responsible. The State party should, as a matter of urgency, repeal the suspended administrative decree which allows the forced sterilization of persons with mental disabilities.

Violence against children, including corporal punishment

20. The Committee is concerned that violence against children, including domestic and sexual violence, is widespread and that corporal punishment of children in the home, schools, penal institutions and care settings is not explicitly prohibited (arts. 2 and 16).

The Committee recommends that the Code on Children and Adolescents and the Penal Execution Code be amended to prohibit explicitly violence against children, and in particular sexual violence, and define corporal punishment in all settings as an offence under the law.

Contemporary forms of slavery, including forced labour and trafficking

21. The Committee is concerned at reports on forced labour practices amounting to slavery, debt bondage (*enganche*) and serfdom in such sectors as agriculture, stock-raising and forestry that particularly concern indigenous communities, and also at the situation of domestic workers living in conditions of domestic servitude. It is further gravely concerned at the increasing number of children affected by the worst forms of child labour in various sectors such as mining, brick-making and saw mills and that one third of persons in domestic servitude are children. The Committee is particularly concerned that the prohibition of slavery and forced labour is not adequately covered in the Penal Code. The Committee is further concerned at the trafficking in human beings for labour and sexual exploitation and in particular of women and young girls from impoverished rural regions in the Amazon who are recruited and coerced into prostitution in brothels located in mining shantytowns (arts. 2, 12, 13, 14 and 16).

The State party should strengthen its efforts to:

- (a) Adopt legislative measures to eradicate forced labour, serfdom and domestic servitude;**
- (b) Ensure in practice the elimination of such contemporary forms of slavery and in particular protect children;**

(c) **Carry out prompt investigation, prosecution and adequate punishment of perpetrators and provide protection, free legal aid, rehabilitation and compensation for victims of forced labour and trafficking;**

(d) **Raise awareness of and train law enforcement personnel, judges and prosecutors on trafficking in persons and to improve the identification of victims of trafficking;**

(e) **Amend the Penal Code and the Domestic Workers Act so that they are brought in line with international standards.**

Attacks against members of the LGBT community

22. The Committee is seriously concerned at reports of harassment and violent attacks, some of which have resulted in deaths, against the LGBT community by members of the national police, armed forces, municipal security patrols (*serenos*) and prison officials and at arbitrary detention and physical abuse in police stations with denial of fundamental legal safeguards (arts. 2, 11, 12, 13 and 16).

The State party should take effective measures to protect the LGBT community from attacks, abuse and arbitrary detention and ensure that all acts of violence are promptly, effectively and impartially investigated and prosecuted, perpetrators brought to justice and victims provided with redress.

Data collection

23. The Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill treatment by law enforcement, military, security and prison personnel, as well as on trafficking, violence, against women, children and other vulnerable groups, including domestic and sexual violence, as well as means of redress (arts. 2, 11, 12, 13, 14 and 16).

The State party should compile statistical data relevant to the monitoring of the implementation of the Convention at the national level, including disaggregated data on complaints, investigations, prosecutions and convictions of cases of torture and ill-treatment by law enforcement and prison personnel, trafficking, violence, including domestic and sexual, against women, children and other vulnerable groups as well as on means of redress, including compensation and rehabilitation, provided to the victims.

24. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the Second Optional Protocol to the International Covenant on Civil and Political rights, aiming at the abolition of the death penalty, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

25. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in appropriate languages, including indigenous, through official websites, the media and non-governmental organizations.

26. The Committee requests the State party to provide, by 23 November 2013, follow-up information in response to the Committee's recommendations relating to: (a) conducting prompt, impartial and effective investigations; (b) ensuring or strengthening legal safeguards for persons detained; and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8 (a), 15 (a) and 17 (b) of the present document.

27. The State party is invited to submit its next report, which will be the seventh periodic report, by 23 November 2016. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, considering that the State party has accepted to report to the Committee under the optional reporting procedure.
