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CIVIL AND POLITICAL RIGHTS

Written statement submitted by the National Coordinator for Human Rights,
a non-governmental organization in special consultative status

The Secretary-General has received the following written statement,
which is circulated in accordance with Economic and Social Council
resolution 1996/31.

[1 February 1999]

1. The National Coordinator for Human Rights of Peru, an organization to which 50 human rights groups are affiliated across the country, submits its concern to the Commission on Human Rights on the following issues, which constitute serious violations of human rights and impair the proper functioning of the rule of law in Peru.

Institutions and democracy

2. The Constitutional Court has not been able to carry out its function of ruling on the constitutionality of laws since three of its seven judges were arbitrarily dismissed in May 1997. The Inter-American Commission on Human Rights recently recommended to the Peruvian Government that it reinstate the three dismissed judges. The Organization Act of the Constitutional Court should also be amended to reduce the requirement of at least six votes to decide on cases of unconstitutionality.

3. It is essential that the autonomy and independence of the Judiciary and the Public Prosecutor's Office should be respected, which is why we demand an end to the Executive Commissions of the Judiciary and the Public Prosecutor's Office, set up in November 1995 and June 1996 respectively, and extended by Act No. 27009 of December 1998 until 31 December of the year 2000. These Executive Commissions have assumed powers which, according to the Constitution, are vested in the governing bodies of the Judiciary and the Public Prosecutor's Office, namely the President's Office and Plenum of the Supreme Court of Justice and the Attorney-General of the Nation respectively.

4. In 1998, new laws distorted the functions of the National Council of the Magistracy, which is responsible for selecting, appointing, ratifying and dismissing judges and prosecutors. These new laws transferred the investigation of cases that could lead to the dismissal of judges to the Executive Commissions of the Judiciary and the Public Prosecutor's Office, as appropriate. These laws must be repealed as soon as possible in order to restore the powers originally attributed by Peru's Constitution.

5. The problems of the judicial system are further aggravated by the practice of employing temporary judges and prosecutors, who now account for 82.5 per cent of the total number, according to the President of the National Council of the Magistracy. It is imperative that judges should be appointed on a permanent basis and that Act No. 26898 of December 1997 granting the same rights and powers to temporary judges as to permanent ones should be repealed.

6. The outcome of this situation is that there is no guarantee that citizens' rights can be defended.

Civilians tried by military courts

7. During 1998, military courts continued to extend their jurisdiction to matters outside their normal scope, thereby restricting the jurisdiction of civilian courts. Apart from the fact that they have continued to try civilians for treason (aggravated form of terrorism), the verdicts and penalties imposed on civilians tried in military courts are not subject to review by the Supreme Court of Justice. Furthermore, the new decree laws on

"national security" have extended the powers of military courts to try common offences affecting property, individual freedom, life, body and health and public security, through the so-called charge of "aggravated terrorism". All this has given rise to an alarming situation, which casts doubts on the Judiciary and renders the rule of law unworkable.

Legislation on national security

8. In May 1998, the Government promulgated a series of laws on "national security", which violate the 1993 Constitution and international norms on due process and judicial guarantees. The following are of particular concern: Legislative Decree No. 895, which irregularly creates the offence of "aggravated terrorism", lowers the age of criminal responsibility to 16 years and gives military courts the power to judge civilians; Legislative Decree No. 899 on "pernicious gangs activity", which contravenes article 19 of the Convention on the Rights of the Child and resorts to State repression as a way of punishing and controlling young gang members, instead of addressing the conditions that generate this type of violence; and Legislative Decree No. 900, which modifies the jurisdiction over petitions of habeas corpus and amparo, restricting it to public law court judges in the judicial districts of Lima and Callao (two in each), and to mixed courts in the rest of the country. Under the previous Act No. 23506, any of more than 50 criminal court judges in Lima and Callao could handle habeas corpus petitions and the 40 civil court judges in Lima and Callao amparo petitions. These new laws violate the minimum standards set out in the International Covenant on Civil and Political Rights and the American Convention on Human Rights.

States of emergency

9. States of emergency currently apply over 15.9 per cent of Peruvian territory and affect 20.5 per cent of the population. There are areas where the measure has been maintained even in the absence of any sign of political violence. The 4,609,000 or so people who live there have had their rights restricted, such as the right to individual freedom, to inviolability of the home, to freedom of movement and to freedom of assembly.

Persons under arrest warrant and displaced persons

10. According to recent studies by the National Round Table on Displacement in Peru, an estimated 530,075 Peruvians have been displaced as a result of the internal armed conflict. They have come from rural areas in the mountains and the central rain forest, mainly from the departments of Ayacucho, Huancaavelica, Apurímac, Junín and Huánuco. While the Peruvian Government has recognized, albeit belatedly, the problem of displacement and the population affected by violence, the action taken has been ineffective owing to the lack of a comprehensive approach.

11. A related issue is that of people under arrest warrant (requisitorados), of whom, according to the Ombudsman's Office, there are 5,228. Some of these were people who were forced to collaborate with subversive groups, while others were implicated as a result of false

information provided by repentant offenders. Others still have been unjustly accused by the security forces and prosecuted. All those persons are under arrest warrant despite the fact that they have no connection whatsoever with subversive groups and in some cases have even been threatened by those groups.

Impunity

12. Independent investigations should be carried out and those responsible for human rights violations, such as torture, extrajudicial executions, forced disappearances, telephone wire-tapping and threats against government opponents should be punished. The Peruvian Government has not complied fully with the ruling of the Inter-American Court of Human Rights in the Neira Alegría case, ignoring the Court's insistence on allowing compensation for moral wrong. In addition, the Amnesty Laws (Acts Nos. 26479 and 26492) granting impunity to perpetrators of grave human rights violations, which are a denial of truth and justice, must be repealed.

Ill-treatment during compulsory military service and forced recruitment

13. Conscripts undergoing compulsory military service are frequently ill-treated, and the illegal practice of forced recruitment is common. Forced recruitment (levas) constitutes a form of arbitrary detention and has been made an offence under Act No. 26989 of November 1998. The time has come to put a stop to these violations of fundamental rights and to punish those responsible for such abuses.

Prison system

14. By the way it operates, the Challapalca Maximum Security Prison (EPMS), situated 4,600 m above sea-level in an inhospitable area between the departments of Puno and Tacna, isolates inmates from their families and paralyzes the judicial proceedings that concern them. Those features, combined with the lack of suitable medical care, constitute a flagrant violation of international norms for the treatment of prisoners. The establishment should therefore be closed without delay. The case of the Yanamayo Maximum Security Prison in Puno is similar. In addition, the conditions of imprisonment of inmates considered to be dangerous at the Callao naval base, who are kept permanently in solitary confinement and are not allowed any visits, reflect the Peruvian Government's intention to inflict punitive prison conditions on persons imprisoned for terrorism and treason and common criminals considered difficult to rehabilitate.

15. Minors who are detained at the Quencoro Maximum Security Prison in the department of Cuzco are prevented from receiving the right care for their age, and should be transferred back to the centres for juvenile care rehabilitation from which they were taken.

16. There is an urgent need for a complete overhaul of the prison system, in order to improve the aspects of infrastructure, food, hygiene and overcrowding. Furthermore, all provisions laying down special conditions of imprisonment for common offenders considered difficult to rehabilitate, or for persons charged with terrorism and treason, should be brought into line with the Standard Minimum Rules for the Treatment of Prisoners.

Freedom of expression

17. In the course of 1998, freedom of expression was constantly obstructed by civilian and military authorities, and by the lack of independence of the Judiciary, preventing journalists from exercising their profession freely and even placing them at personal risk.

18. Examples include the attacks on the reporter Angel Páez by the tabloid press, which accused him for more than two months of being a traitor on account of his articles on Peru's arms trade. Another case was that of the journalist César Hildebrandt, who was prosecuted for alleged treason and spying because he reported on a secret session of the Peruvian Congress dealing with the border dispute with Ecuador.

Economic, social and cultural rights

19. Unfortunately, no basic changes have been made in any of the legislation or situations that led to the observations of the United Nations Committee on Economic, Social and Cultural Rights in May 1997. The structural factors obstructing the exercise of the rights recognized in the International Covenant on Civil and Political Rights are still the same. The most obvious sign is the fact that around 50 per cent of Peruvians live in a situation of poverty and 14.7 per cent in extreme poverty. Peru continues to be one of the countries on the continent with the greatest inequalities in terms of income distribution.

20. The systematic violation of labour and union rights is particularly serious, as the ILO and other international bodies have repeatedly pointed out. The drastic cut in retirement benefits is also of great concern.

21. Further problems arise from the systematic practice of large-scale sterilization of poor women in rural areas as part of birth control programmes run by the Ministry of Health, and from the recent parliamentary proposal to alter the structure, functions and current coverage of the Peruvian Social Security Institute, which could seriously affect the rights of workers in terms of both the management of the system and free access to it.

Human rights defenders

22. Human rights defenders have also run into various forms of interference with their activities, ranging from restrictions on their work, limitations on their defence rights and defamation to threats against their lives and physical integrity. We hope that after the approval of the United Nations Declaration on Human Rights Defenders on 10 December 1998, the Peruvian Government will take steps to ensure that this type of harassment ceases and that adequate protection and guarantees are provided for the work of human rights defenders in Peru.

COORDINADORA NACIONAL DE DERECHOS HUMANOS

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Agustino |
| 2. AFAVIT
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