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CIVIL AND POLITICAL RIGHTS

Written statement* submitted by the International Federation of Human Rights
Leagues and the World Organization against Torture, non-governmental
organizations in general consultative status

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

[22 December 1999]

* This written statement is issued, unedited, as received from the submitting non-governmental organization.

Non-compliance with international obligations

1. The Peruvian State has constantly ignored the reports and recommendations of international human rights bodies, such as the Inter-American Commission on Human Rights, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee against Torture and the Committee on the Elimination of Racial Discrimination. In 1999 alone, the Inter-American Commission published seven reports¹ on 34 cases involving 65 enforced disappearances which occurred between 1989 and 1993, in addition to numerous reports from previous years whose recommendations are yet to be implemented.

2. However, the most serious act has been Peru's decision to withdraw its recognition of the jurisdiction of the Inter-American Court of Human Rights. Peru justified its decision by arguing that the Inter-American Court had exceeded its authority by prescribing the amendment of domestic legislation. This argument is unfounded, however, since all international treaties imply the adjustment of domestic legislation, in addition to which the Vienna Convention on the Law of Treaties expressly prohibits non-compliance with international treaties based on domestic legislation. Subsequent to its decision, the Peruvian State refused to respect two decisions that had been handed down by the Inter-American Court and to participate in two other cases which had been brought against it.

3. The international community has reacted almost unanimously to the decision of the Peruvian State. The European Union regrets the decision taken and several members of the Organization of American States have pointed out that it reflects a weakness in the inter-American human rights system. The Sub-Commission on the Promotion and Protection of Human Rights has urged Peru to continue to accept the jurisdiction of the Inter-American Court.

Interference in the administration of justice and judicial guarantees

4. The judiciary and the Government Procurator's Office still fall under the control of the Executive, through the Executive Committees, which have usurped their functions. The mandate of these committees has been extended to the end of 2000, through Act No. 27009.

5. This interference has also been extended to other bodies within the administration of justice system, such as the National Council of the Magistracy, an autonomous constitutional body responsible for selecting, appointing and removing judges. However, pursuant to Act No. 26933, its authority to remove judges from office was handed over to the Executive Committees.

6. Judicial posts continue to be of a provisional nature. According to the Director of the Academy of the Magistracy, there are 850 temporary judges and only 214 with tenure of office in the judiciary and the Government Procurator's Office.² Provisional judges are appointed by the Executive Committee of the Judiciary. Under a current programme, temporary judges may move up the ranks, to the detriment of judges with tenure of office.

7. The crimes of “aggravated terrorism” and “aggravated offences” have been created pursuant to special legislation, similar to emergency legislation implemented, in cases of terrorism, which violates judicial guarantees and grants broad investigative powers to the police. For example, the police can impose incommunicado detention or extend detention periods beyond the time frames established under the Constitution, and judges can be forced to charge detainees, even in the absence of sufficient evidence.
8. The Constitutional Court is still disjointed, rendering it impossible to challenge the constitutionality of laws which violate the Constitution.

The systematic practice of torture and other cruel, inhuman or degrading treatment

9. In spite of the adoption of the 1998 Act against torture, the systematic practice of torture has continued, even leading to the death of victims. Magistrates, especially prosecutors from the Government Procurator’s Office, have refused to apply the Act, settling for lighter charges such as minor injury or abuse of authority, arguing that the injury caused to victims was not serious enough to constitute the crime of torture. In the first case of torture tried under the new law, the torturer was acquitted in spite of the evidence against him.
10. The prison system, which has been expanded is designed to destroy inmates physically and psychologically, disregarding the principle of rehabilitation as laid down in the Peruvian Constitution and Penal Code. The system covers perpetrators of terrorist crimes and inmates described as “difficult to rehabilitate”. Perpetrators of such crimes are subjected to subhuman conditions and penal institutions which are veritable punishment centres. The authorities have kept the Challapalca Prison, situated inside a military barracks on a very inhospitable site more than 4,500 metres above sea level where the climatic conditions make human life difficult.

Freedom of expression

11. Pressure is still being exerted on the media. In addition to the case of Mr. Baruch Ivcher whose nationality was withdrawn so that he would lose ownership of his television station, there are also the Global Televisión and Referéndum newspaper cases. Mr. Delgado Parker lost the management of Global Televisión in summary judicial proceedings because the station was broadcasting a political programme in open opposition to the President’s re-election. The newspaper Referéndum, also in open opposition to the Government, was forced out of operation as the company that printed it was threatened with investigation by the National Tax Administration Authority (SUNAT) if it did not comply.
12. A campaign of defamation has been unleashed against human rights defenders and bodies, independent journalists and political opposition leaders through the media and Internet. According to media workers’ reports, this campaign is spearheaded by the National Intelligence Service.

13. The Web site of the so-called Pro-Truth Association (APRODEV), which attacks journalists who are critical of the Government, is part of this campaign. Criminal proceedings have been brought against Héctor Faisal, APRODEV's legal representative, but they have been manipulated in his favour. The judges who were hearing the case, Antonia Saquicuray and Greta Minaya, were removed from office after ruling in favour of the plaintiffs. The judges who were appointed to replace them subsequently overturned those decisions.

14. Journalists who report on the Government's anti-opposition activities are being persecuted. One such example is that of the Free Press Association members who presented proof, at a press conference, of surveillance of prospective presidential candidates by members of the Military Intelligence Service, and who were later accused by the Supreme Council of Military Justice of crimes against public faith and the judicial function.

Absence of guarantees in the electoral process (art. 25)

15. A number of legislative changes have been introduced to provide a legal framework for President Fujumori to have a third unconstitutional term in office, leaving the electoral process open to possible fraud. Consequently, the law on "authentic interpretation", which would enable the current President of the Republic to run for a third term, was passed in 1996, triggering preliminary political proceedings for judicial misconduct and the subsequent dismissal of the Constitutional Court judges who ruled that the law was invalid, and the resignation of the Court's President.

16. There are well-founded fears that the elections will not be conducted in a transparent manner since the monitoring of the electoral process is in the hands of the executive branch.

17. In August 1999 Act No. 27163 was passed, prohibiting senior State officials involved in criminal cases concerning crimes against the State, or those on fiscal charges or with arrest warrants from presenting their candidacy for the presidency or vice-presidency of the Republic. This is designed to exclude the former President of the Republic Alan García and other candidates from the presidency since they are involved in judicial proceedings for alleged maladministration during their term of office, which, in fact, violates the principle of presumption of innocence.

18. Additionally, several presidential candidates have publicly stated that they are under surveillance by the National Intelligence Service and have referred to interference at public events. As a result, the Office of the People's Advocate has assumed the responsibility of supervising and observing the electoral process.

19. Finally, the lack of consolidated official data on the electoral register has prompted questions about the minimum conditions for a transparent electoral process open to public scrutiny.

20. These situations are obstructions to the electoral process and could lead to fraud. This is why we believe that the elections should have international observers, not only during the actual voting but during the entire electoral process.

Conclusion

21. The International Federation of Human Rights Leagues calls on the Commission on Human Rights to urge the Peruvian Government to comply with the decisions of international human rights bodies, and to follow closely the situation regarding human rights and democracy in Peru, with a view to halting human rights violations against the Peruvian people and preventing electoral fraud that would make the current regime blatantly illegitimate and destabilize the Andean region at the start of the new millennium.

Notes

¹ Report Nos. 51/99, 52/99, 53/99, 54/99, 55/99, 56/99 and 57/99.

² La República, 18 March 1999.
