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增进和保护所有人权——公民权利、政治权利、
经济、社会和文化权利，包括发展权

反恐中注意增进与保护人权和基本自由问题特别报告员马丁·舍伊宁的报告

增编

对秘鲁的访问*

内容提要

反恐中注意增进与保护人权和基本自由问题特别报告员于 2010 年 9 月 1 日至 8 日访问了埃及。特别报告员在报告中探讨了秘鲁为支持在 1980 至 2000 年国内武装冲突期间国家安全部队的恐怖主义罪行和侵犯人权事项受害者而采取的措施。在报告第二部分，他分析了现行反恐立法框架及其实际适用和执行情况。

特别报告员的结论是，在为国内武装冲突所造成的痛苦伸张正义和提供赔偿方面，秘鲁提供了重要的教益，特别报告员认为，设立真相与和解委员会是一种最佳做法。对秘鲁前总统及其助手的审判、对先前通过不公正审判所作恐怖主义有罪判决的重审，是该国在遵守国际人权标准履行所负义务方面采取的重大步骤。

* 本访问报告的内容提要以所有正式语文印发。报告本身载于内容提要附件中，只以提交语文和西班牙文印发。

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但是，特别报告员关注的是，在赔偿办法的实施方面进展缓慢。另外一个关注的问题是，在某些政治圈子中，有一种将人权维护者和社会抗议运动与恐怖主义相联系的趋势。他建议秘鲁政府采用一切现有手段扭转这种趋势，支持促进国际人权，将其作为和解的一个要素，作为目前和未来反恐措施能否成功的一个要素。

特别报告员仍然对刑事立法中所载关于恐怖主义的宽泛定义表示关注。他强调，不仅作为反恐措施，而且在大规模示威的情况中诉诸紧急状态和部署军队具有使冲突军事化的危险，而这种冲突不应当动用军队来解决。在该国最偏远的地区，政府也必须加强服务和权威机构的存在，以确保在农村和土著社区与中央政府之间建立信任与合作。

特别报告员欢迎国会决定废除行政部门根据立法权下放通过的第 1097 号法令。该法令本来可能允许中止针对在国内武装冲突期间所犯侵犯人权事项的刑事诉讼，并看来对《战争罪及危害人类罪不适用法定时效公约》之下的罪行适用法定时效。

特别报告员做出了若干建议，以帮助反对将人权维护者和社会抗议运动诬蔑为恐怖主义、执行集体赔偿方案、加速了结国家安全部队在国内武装冲突期间所犯侵犯人权事项的未结案件，并使关于恐怖主义的现行刑事立法与适用的国际人权标准相一致。他还建议废除第 1095 号法令，因为该法令基于适用国际人道主义法方面的一个错误概念。

落实这些建议不仅将帮助该国政府进一步加强该国履行其国际人权义务，而且还会创造有助于反恐的条件，至少会使合法反恐措施更加有效。

Annexe

Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism on his mission to Peru

Contents

		Paragraphs	*Page*
I.	Introduction	1–4	4
II.	Measures to support victims of terrorist crimes and of counter-terrorism measures during the internal armed conflict (1980-2000)	5–21	5
	A. Truth and Reconciliation Commission	5–6	5
	B. Implementation of individual and collective reparation programmes	7–13	5
	C. Investigation, prosecution and trials of State officials involved in human rights violations committed within the framework of counter-terrorism operations	14–20	8
	D. Measures to remedy the consequences of the application of earlier counter-terrorism legislation that was contrary to international human rights standards	21	11
III.	Current legislative counter-terrorism framework and related issues	22–36	12
	A. Definition of terrorism	22–25	12
	B. Collaboration with terrorism and the crime of glorification	26–28	13
	C. Penitentiary benefits for terrorist convicts	29–30	15
	D. States of emergency and the regulation of the use of force by the armed forces and the police	31–34	15
	E. Stigmatization of human rights defenders	35	17
IV.	Conclusions and recommendations	36–47	17
	A. Conclusions	36–37	17
	B. Recommendations	38–47	18

I. Introduction

1. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism visited Peru from 1 to 8 September 2010 at the invitation of the Government. The Special Rapporteur would like to thank the Government of Peru and all his other interlocutors for their fine cooperation in the realization of a successful mission.

2. During his visit, the Special Rapporteur visited Lima, Ayacucho and Cusco. He met with the Ministers for Foreign Affairs and for Defence, and with Government officials from the Ministries of Foreign Affairs, of Justice and of the Interior, as well as with prosecutors and officials from the armed forces, the police and the intelligence service. He also had meetings with parliamentarians, justices of the Supreme Court and other members of the judiciary, the Ombudsperson and her regional representatives, the President of the Truth and Reconciliation Commission, and regional and local authorities in Ayacucho and Cusco. In Miguel Castro Castro Prison in Lima and in Yanamilla Prison in Ayacucho, he was also able to privately interview suspects and convicts of terrorism-related crimes. He met with representatives of civil society, including non-governmental organizations, academics, lawyers, representatives of local, indigenous and peasant communities and of internally displaced persons, victims of terrorism, victims of human rights violations committed by State authorities during the fight against terrorism and members of compensation commissions. The Special Rapporteur also visited a resettled community of internally displaced persons and met with leaders from returned communities.

3. Coinciding with the country's transition to democracy after more than 10 years of military rule, the terrorist organization Partido Comunista del Perú – Sendero Luminoso ("Shining Path") carried out its first acts of violence in May 1980. Following that incident, an internal armed conflict continued in the country for 20 years and led to the death or disappearance of 69,000 people, either as a consequence of the violence carried out by terrorist organizations or of the counter-terrorism activities conducted by the State. The Truth and Reconciliation Commission, which was established in the aftermath of the conflict, comprehensively documented the tragedies of the conflict and issued recommendations on measures to be taken by the Government in order to compensate for suffering, consolidate democracy and strengthen respect for human rights within the rule of law. He also learned about the important trial and conviction in 2006 of Abimael Guzmán, leader of Sendero Luminoso, and the equally significant criminal proceedings that confirmed the guilt of former President Alberto Fujimori Fujimori for human rights violations committed in the name of counter-terrorism.

4. In his earlier reports, the Special Rapporteur emphasized that acts of terrorism amounted to the destruction of human rights. He is also aware of the damage caused by the internal armed conflict on the country's economic and social development. While it remained unclear whether the terrorist organization Movimiento Revolucionario Túpac Amaru, which participated actively in the conflict, still carries arms, the Peruvian authorities consider the remnants of Sendero Luminoso, which today operate in the regions of Valle de los Rios Apurímac y Ene (VRAE) and Valle del Alto Huallaga regions, a security threat. The Government of Peru participates in international counter-terrorism activities at the level of the United Nations and within the Inter-American framework through, for example, international cooperation against money laundering and financing of transnational and organized crime, including terrorism, as part of the South American Financial Action Task Force. Although Peru does not currently perceive the phenomenon of international terrorism to be a threat against its own national security, it is aware of the global threat of international terrorism.

II. Measures to support victims of terrorist crimes and of counter-terrorism measures during the internal armed conflict (1980-2000)

A. Truth and Reconciliation Commission

5. The Truth and Reconciliation Commission was established in September 2001[1] with the purpose of clarifying the processes, acts and responsibilities connected to the violence that took place in Peru between May 1980 and November 2000. The Special Rapporteur regards as an element of best practice the political decision to establish the Commission and to support its work, which essentially consisted of analysing the different conditions underlying the violence and, in order to contribute to the process of criminal prosecutions, documenting the crimes and human rights violations committed by terrorist organizations and by certain State agents in the conduct of counter-terrorism operations during that period. The Commission proposed reparations for the victims and their families together with a set of recommendations on measures to be taken by the Government in order to promote reconciliation and to prevent the repetition of similar events in the future. The work of the Commission lasted for more than two years and consisted of, inter alia, collecting close to 17,000 testimonies, holding more than 20 public hearings and conducting a number of interviews with different actors. In the view of the Special Rapporteur, its work is an important element of the State's compliance with its international human rights obligations to ensure that truth and justice are provided to the victims, which has been facilitated by the public nature of the Commission's work, the wide dissemination of its findings and the investigation of criminal acts. He considers the findings of the Commission, as compiled in its final report of August 2003, a reliable source of information.

6. According to the Commission, the majority of the killings and disappearances during the internal armed conflict is attributable to terrorist organizations, that is 54 per cent to Sendero Luminoso and 1.5 per cent to Movimiento Revolucionario Túpac Amaru. However, considering that more than 40 per cent of grave human rights violations were committed by members of the security forces, the Special Rapporteur is concerned that some State officials, including some high-ranking Government representatives, still insist on referring to grave human rights violations perpetrated by the State's security forces as "excesses" and isolated events. The Special Rapporteur acknowledges the intensity and unprecedented scale of the terrorist violence carried out, particularly by Sendero Luminoso; he reiterates, however, that neither this nor the lack of experience or ability of the State security forces to fully grasp the scale and characteristics of the insurgent movements at the time can never justify measures and actions that are in flagrant violation of international human rights.

B. Implementation of individual and collective reparation programmes

7. On 29 July 2005, Law No. 28592 was adopted with the objective of establishing the normative framework for a comprehensive reparations plan for victims of violence., in accordance with the conclusions and recommendations issued by the Truth and Reconciliation Commission in its final report. The implementation of the Law also falls under the strategic guidelines listed in the national human rights plan for the period 2006-

[1] Supreme Decree No. 065-2001-PCM, as ratified and complemented by Supreme Decree No. 101-2001-PCM.

2010.[2] The Special Rapporteur welcomes the comprehensive nature of the reparation programmes, which include a number of initiatives on the individual as well as the collective level and which, according to the regulation of Law No. 28592, explicitly aim at recognizing victims as such and have the objective of allowing them access to justice, the restoration of their rights, the resolution of the consequences stemming from the violation of their human rights and material and moral reparation, whether specific or symbolic, for the damage that they have suffered.[3] He notes with appreciation the inclusive definition of the concept of "victim" as stipulated in Law No. 28592 and regards as an element of best practice the fact that the State has acknowledged responsibility on an equal basis towards those who suffered from terrorist attacks and those who were subjected to crimes committed by members of the State security forces.

8. The Special Rapporteur is encouraged by the political decision made in July 2010 to establish a multi-sector commission in charge of developing the guidelines for determining the amounts, proceedings and modalities of payment to victims of violence.[4] He acknowledges the difficulties connected with identifying victims and verifying their identities for registration purposes as one element contributing to the delay in completing the central registry for victims, which serves to register victims and groups of victims that may be eligible to benefit from the different compensation schemes. However, he is concerned that, as a result of this delay (as at 23 July 2010), none of the close to 40,000 beneficiaries[5] entitled to individual economic reparations, including victims or relatives of victims subjected to extrajudicial killings, enforced disappearances or rape or those suffering from physical or mental disabilities as a result of the violence, has yet received any economic compensation.

9. Beneficiaries of collective reparation programmes, as established in article 7 of Law No. 28592, include rural, indigenous, peasant and other communities that represent certain characteristics, such as high concentration of individual violations, devastation, enforced displacement or the breakdown or destruction of community institutions. Since this measure was first taken in April 2007, the High-Level Multi-Sector Commission,[6] which constitutes the central body responsible for the coordination and supervision of the implementation of collective reparation programmes, has approved funding for 1,475 projects, including for the construction of irrigation systems and community facilities and activities chosen by the affected communities themselves. The Special Rapporteur is aware of the work by the Commission to establish guidelines to facilitate the integration of both regional and local governments in the implementation process and of the recent initiative that aims at ensuring that displaced people who have not returned to their original places of residence and who, therefore, have faced difficulties in gaining access to the collective reparation programmes, are also accommodated on an equal basis.[7] However, he is concerned about the slow progress of and the lack of resources allocated to the reparation programmes, which adds to the challenges faced because of the extremely poor conditions in which many of the communities live and which were worsened as a direct consequence of the violence to which they were subjected. He learned about the frustration caused by the rigidity of administrative structures, which is partly reflected by the shortcomings in the

[2] Supreme Decree No. 017-2005-JUS.
[3] Supreme Decree No. 015-2006-JUS, art. 3.
[4] Supreme Resolution No. 171-2010-PCM.
[5] Document No. 043-2010-PCM-CR/P.
[6] The High-Level Multi-Sector Commission to monitor State Actions and Policies on matters relating to Peace, Collective Reparations and National Reconciliation was created by Supreme Decree No. 011-2004-PCM.
[7] Guidelines for intervention for organized groups of internally displaced, Executive Secretary – CMAN, May, 2010

coordination of action taken at the central level with that taken at the regional and local levels. Furthermore, in many cases the legal mandate to execute the programmes does not correspond to the allocation of resources. The Special Rapporteur believes that the success of collective reparation programmes in cooperation with actors at all levels ultimately depends on the political will of the Government. He urges the Government of Peru to take appropriate measures to actively tackle and overcome obstacles that hinder the effective implementation of Law No. 28592 and thereby promote progress towards reconciliation and justice in Peruvian society.

1. Indigenous, peasant and rural communities

10. The atrocities committed during the internal armed conflict mainly affected indigenous communities and peasants, including Quechua speakers, who had lived in extreme poverty and suffered from discrimination and marginalization. The Special Rapporteur is mindful that, as a consequence of the violence, entire social networks were destroyed, which had a serious impact on the organizational and cultural autonomy of indigenous peoples. He is aware of the intensity and the large-scale nature of human rights abuses committed against these communities, including the extreme suffering and extermination of segments of the Asháninka people caused by Sendero Luminoso,[8] and that for many years these ordeals were not properly acknowledged and adequately addressed by the State. This is partly a consequence of deep-rooted discriminatory attitudes that still prevail in Peruvian society, and partly due to the fact that the violence often took place in areas that did not benefit from the presence of or protection by State authorities.

11. In accordance with the regulation of Law No. 28592, the objective of the collective reparation programmes is, inter alia, to contribute to the reconstruction of the social, institutional, material and economic-productive capital of the rural and urban communities affected by the violence.[9] The Special Rapporteur notes that the regulation lists participation and the intercultural dimension as some of the issues guiding the implementation process. It thereby makes it mandatory for reconstruction projects to be carried out on the basis of dialogue and consultation with the communities themselves, and for all reparation measures to be based on the recognition of existing ethnic and cultural differences, as well as of the varying impact of the violence on different communities.[10] He is concerned, however, at complaints expressed by several of his interlocutors about the lack of an inclusive policy with regard to indigenous peoples and their claims and needs. He is aware of the large number of ongoing social conflicts in the country relating precisely to these circumstances and the lack of appropriate responses by the State authorities. He recalls that, by fully committing to the realization of collective reparation programmes, Peru would effectively prove its recognition of members of indigenous peoples as equal citizens who found themselves in the crossfire of the conflict because of their distinctiveness and the discrimination it generated. In addition, full implementation of these compensation schemes would be an important step towards the acknowledgement by the State that the preservation of this distinctiveness constitutes one of the fundamental rights enjoyed by indigenous peoples, as stipulated in articles 1 and 27 of the International Covenant on Civil and Political Rights and article 2 of the Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organization (ILO).

[8] See the final report of the Truth and Reconciliation Commission 2003, Vol. V, chap. 2.8.
[9] Supreme Decree 015-2006-JUS, art. 29.
[10] Ibid., art. 7 (*e*) and (*f*).

2. Impact of violence on women

12. The Special Rapporteur is mindful of the dual discrimination against indigenous and rural women in Peru as both women and members of extremely marginalized indigenous and rural communities. He is concerned that, despite the efforts made by the Truth and Reconciliation Commission to improve the visibility of the gender violence committed during the internal armed conflict and the long-term impact it had on women's social status, in practice very little has been done to highlight and remedy the specific effects of the internal armed conflict on women's lives. The regulation of Law No. 28592 stipulates that specific attention should be paid to gender equality and equal opportunities[11] in the implementation of collective reparation programmes. However, apart from the inclusion of a gender quota to be applied in the composition of the management committees in charge of matters relating to the execution of collective reparations at the local level, none of the Special Rapporteur's interlocutors was able to inform him of any specific project or action falling within the reparations scheme that directly or indirectly aimed at providing better conditions for women in terms of non-discrimination, equal opportunities and social status. Furthermore, he notes that Law No. 28592, within the framework of economic reparations, does not fully take into account that it was typically women, who, following the loss of their spouses or other male family members, have had to take over and on their own handle new tasks, including economic responsibility, in order to support and maintain their families. Such situations, which were often exacerbated by enforced displacement and stigmatization for allegedly being associated with terrorists, were not only a consequence of killings and enforced disappearances but also of the many cases of arbitrary detention and prison sentences on charges of terrorism that affected innocent persons.

13. It is essential that, in the construction of compensation schemes, as well as during the entire process leading to their implementation, full acknowledgement be given to the social, economic and political inequalities between men and women and that due respect is paid to the different impact that certain forms of abuse have on women.[12] The Special Rapporteur, while highlighting the significance of women's experiences of organizing themselves in order to fight violence and to fight for justice during the years of the conflict, wishes to emphasize that empowerment is a central element in the reconciliation. Effective participation and a sense of ownership among the affected population, in particular on the part of indigenous peoples and women, are of utmost importance for the successful realization of collective reparation programmes. The involvement of women, indigenous peoples and peasant and rural communities in the design and implementation of reparation programmes is, in his view, a cornerstone for building a society without terrorism. It will help to avoid further experiences of social injustice and the risk of creating a breeding ground for new manifestations of terrorism.

C. Investigation, prosecution and trials of State officials involved in human rights violations committed within the framework of counter-terrorism operations

14. According to the Truth and Reconciliation Commission, an important component of the reconciliation process is the prosecution of all those criminally responsible, including not only members of the terrorist organizations but all other perpetrators of serious crimes

[11] Note that article 7(g) of Supreme Decree 015-2006-JUS uses the concept of "gender equity".

[12] See Julie Guillerot, "Linking gender and reparations in Peru: a failed opportunity" in *What Happened to the Women?: Gender and Reparations for Human Rights Violations*, edited by Ruth Rubio-Marín, Social Science Research Council, New York, 2006, p. 171.

and human rights violations that took place during the internal armed conflict. The criminal proceedings against former President Fujimori under the criminal legislation applicable in the country at the time the acts were committed constitute a significant step forward in the State's compliance with its international human rights obligations to investigate, prosecute and sanction those responsible for human rights violations and to provide their victims with compensation.[13] Thus, applying the theory of "indirect authorship" as the most appropriate legal concept to establish the criminal responsibility attributable to the defendant, the Special Criminal Chamber of the Supreme Court found that, in his capacity as Head of State and by means of the power attached to this position, the former President created and controlled a criminal organization for the purposes of fighting subversive groups. In this context, the "Colina" death squad, on his orders, carried out acts of torture, killings and enforced disappearance in Barrios Altos and La Cantuta.[14] On appeal, the verdict and the prison sentence of 25 years were unanimously and definitively confirmed by the First Transitory Criminal Chamber of the Supreme Court, which, importantly, affirmed that the criminal acts amounted to crimes against humanity since they were part "of a State policy that consisted of the systematic elimination of alleged members of terrorist organizations" and affected a massive number of defenceless people.[15] The Special Rapporteur regards the trial as a best practice, as it was conducted in an impartial, public and transparent manner in accordance with international fair-trial guarantees. He is encouraged by the potential of international judicial cooperation in this field, as exemplified by the decision of the Supreme Court of Chile to respond to the extradition request submitted by Peru concerning the former President on charges of grave human rights violations. He also considers of utmost importance the affirmation by the Supreme Court of Peru that none of the victims of the killings in Barrios Altos and La Cantuta was a terrorist, which contributed significantly to the restoration of their dignity and that of their relatives.[16]

15. Human rights violations committed during the internal armed conflict are prosecuted within the framework of a specialized judicial subsystem established specifically for this purpose under the Public Prosecutor's Office and the Judiciary. The system is supported by the work on exhumations and analysis of human remains by specialized forensic teams of the Institute for Legal Medicine.[17] The Special Rapporteur is aware of the complexity and difficulty of many cases, partly due to the time that has lapsed since their perpetration, but also to the fact that witness protection, as established in the law, is not effectively implemented and prevents the courts from obtaining testimonies. In some cases, the documentation necessary for the identification of witnesses and suspects has been destroyed or was never available, because no registers were kept. He is, however, gravely concerned that the delay of the process and the relatively small number of convictions in this context are, to a significant extent, due to the unwillingness of the Ministry of Defence, apparently supported in certain other governmental circles, to allow access to its files, including lists of army officers present in the different regions affected by the conflict, and to information on the aliases and code names frequently used by military officials during the conflict.

16. The atrocities committed during the years of internal armed conflict in Peru were mainly directed at men, who accounted for up 80 per cent of all deaths. Some of the human rights abuses, however, such as the whole range of criminal acts constituting sexual and gender violence, were particularly directed at women, with not only serious consequences

[13] See *Barrios Altos v. Peru*, judgement of 14 March 2001, and *La Cantuta v. Peru*, judgement of 29 November 2006, Inter-American Court of Human Rights.
[14] Judicial file No. 19-2001-AV, judgement of 7 April 2009.
[15] Judicial file No. AV 19-2001-09-AV, 30 December 2009, p. 110.
[16] Judicial file No. 19-2001-AV, para. 65.
[17] Resolution of the Office of the Prosecutor-General No. 1262-2003-MP-FN, 13 August 2003.

for their physical and mental health, but also for their social status. The Special Rapporteur, however, notes that the large majority of cases of rape were perpetrated by members of State security forces, and he is concerned that the rate of criminal proceedings in this context is still minimal. Furthermore, while rape is the only form of sexual violence that may give rise to economic individual compensation under Law No. 28592, this aspect of the Law is still awaiting implementation (see paragraph 8 above).

17. The Special Rapporteur is concerned about judicial rulings in Peru that have as an effect the prevention of criminal justice in cases of serious human rights violations. Such outcomes are the result of the application of a statute of limitations or of the principle of *non bis in idem* also in cases where the accused was wrongly exonerated of criminal responsibility or where an earlier trial did not comply with the requirements of impartiality and independence. In November 2009, the Supreme Court issued a legally binding interpretation of the crime of enforced disappearance,[18] which appears to bar the prosecution of public officials accused of involvement in the commission of that crime in cases where their employment status has changed after the date that the law came into force. The Special Rapporteur also highlights the controversies surrounding Legislative Decree No. 1097,[19] which was adopted by the Executive on the basis of powers delegated by Congress to legislate on procedural and penitentiary norms relating exclusively to military and police personnel who are subject to criminal proceedings or convicted for crimes that involve human rights violations.[20] The said Decree, in its article 6, stipulated that discontinuation (*sobreseimiento*) of criminal proceedings relating to human rights violations would be ordered by the courts in cases where the time allowed for investigation has expired. The Special Rapporteur notes that, according to article 202 of the Code on Criminal Procedure, this period amounts to 14 months in cases of a complicated nature. During his mission, the Special Rapporteur voiced serious concern about the Decree. While he is mindful of the right to be tried without undue delay on a criminal charge, he also believes that the non-cooperation of the Ministry of Defence essentially contributes to the delay affecting investigations into these specific cases, that the provision in question only concerned persons accused of human rights violations and, furthermore, that the statements made by members of the Executive and of Congress in relation to the Decree gave the clear impression that it might well have been adopted for the purpose of benefiting a specific and identifiable group of defendants. Under international law, the State has the obligation to ensure access to truth, justice, compensation and, ultimately, dignity for victims. Measures effectively promoting a climate of impunity constitute serious impediments to efforts made to consolidate democracy and to promote respect for human rights. This has clearly been stated by the Inter-American Court of Human Rights and the Human Rights Committee.[21]

18. Legislative Decree No. 1097, in its first complementary provision, also established 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. To extend the consequences of such a provision to bar prosecutions on other legal bases, such as customary international law, substantive human rights treaties or domestic law, would be contrary to the object and purpose, and also the wording, of article 1 of the Convention itself, according to which the prescription of the crimes in question is prohibited "irrespective of the date of their commission". With regard to the declaration by Peru in relation to the implementation of the Convention,[22] according to which the State acceded to

[18] Plenary Accord, 9-2009/CJ-116, 13 November, 2009.
[19] *El Peruano* (Official Journal), 1 September 2010.
[20] Law No. 29548.
[21] See for example the case of *Barrios Altos v Peru*, paras. 41-44, and CCPR/C/79/Add.72, para. 9.
[22] Legislative Resolution No. 27998.

the Convention with respect to crimes covered by the Convention that are committed after its entry into force for Peru, the Special Rapporteur emphasizes that it cannot be invoked to impose a statute of limitations for crimes that must not be subject to such limitations, because this would defeat the very object and purpose of the Convention.

19. The Special Rapporteur notes with appreciation that, several days after his mission, on 15 September 2010, Legislative Decree No. 1097 was, with the support of the Executive, repealed by Congress by an overwhelming majority of 97 votes in favour to one against.[23]

20. During his visit, the Special Rapporteur experienced and expressed his concern at the ambiguity with which the concept of human rights was perceived in Peruvian society, including the fact that prosecutions of military and police officials for human rights violations were sometimes referred to in highly derogatory terms, even in certain sectors of the Government. The decision by Congress to repeal Legislative Decree No. 1097 as a matter of urgency, and as an immediate response to the strong opposition generated by the promulgation of that Decree among the Judiciary,[24] prosecutors, members of Congress and, not the least, within civil society, is for the Special Rapporteur an encouraging sign. He encourages the Government to be proud and take ownership of the promotion of and respect for human rights, together with other actors at all levels of society.

D. Measures to remedy the consequences of the application of earlier counter-terrorism legislation that was contrary to international human rights standards

21. In his previous thematic and country-specific work on the right to a fair trial in the fight against terrorism, the Special Rapporteur emphasized the importance of the principle of normalcy, namely, his strong preference for dealing with terrorism as a serious crime, subject to ordinary proceedings before ordinary courts. The Constitutional Court ruling of 3 January 2003[25] constituted an important move away from the mentality embedded in counter-terrorism emergency legislation enacted under the rule of former President Fujimori. In its judgement, in which the compatibility of Decree Laws Nos. 25.475, 25.659, 25.708 and 25.880 with constitutional provisions and international human rights standards was reviewed, the Court declared unconstitutional, inter alia, provisions that allowed for criminal charges on the basis of vaguely and broadly formulated offences and for terrorist suspects to be tried by special courts without recourse to procedural guarantees.[26] Within the framework of a legislative process towards reform of earlier counter-terrorism legislation, the National Criminal Court, in accordance with Legislative Decrees Nos. 922 and 926 adopted on 11 and 19 February 2003, declared void the trials that led to more than 1,000 convictions for the crime of treason and for terrorist offences pronounced by military courts and faceless judges under the previous legislation. The retrials that followed, which, as at September 2009, had resulted in the conviction of 864 persons and the acquittal of 527 others for charges of terrorism, and the abandonment by the State of special courts for the trial of terrorist cases provide an important lesson and include, in the view of the Special Rapporteur, elements of best practice in the restoration of the rule of law and the State's responsibility to ensure procedural guarantees and a fair trial to all persons charged with a crime, including terrorism suspects.

[23] Law No. 29572 which repeals Legislative Decree No. 1097.

[24] See First Special Criminal Chamber, judicial file No. 28-2008 of 15 September 2010, and Second Special Criminal Chamber, judicial file no. 67-2008 of 20 September 2010.

[25] Judicial file No. 010-2002-AI/TC, 3 January 2003.

[26] Ibid., paras. 36-42 and 94-109.

III. Current legislative counter-terrorism framework and related issues

A. Definition of terrorism

22. In the absence of a comprehensive international definition of the crime of terrorism, the Special Rapporteur has emphasized the need for strictly confining the applicability of counter-terrorism legislation to specific acts that amount to a level of violence that is sufficiently high to distinguish the particularly serious nature of terrorism from any other type of criminal act. For this purpose, he has advocated that domestic provisions on terrorism be formulated on the basis of the characterization of the crime as contained in Security Council resolution 1566 (2004) and, more specifically, that terrorist offences comprise three cumulative conditions:

(a) They are committed against members of the general population or segments of it, with the intention of causing death or serious bodily harm, or the taking of hostages;

(b) They are committed for the purpose of provoking a state of terror, intimidating a population or compelling a Government or international organization to do or abstain from doing any act;

(c) They correspond to all elements of a serious crime as defined by the law in force at the time of their commission.

23. During his mission, the Special Rapporteur discussed in depth the contents of counter-terrorism legislation and learned about efforts to bring the relevant legal framework into line with international standards. He was informed about the work currently under way by an expert commission within the Prosecutor's office to prepare a draft counter-terrorism law that would replace current provisions on terrorism-related crimes and that would also take into account the framework of the State's international obligations under various conventions and protocols against terrorism, as well as Security Council resolutions. The Special Rapporteur welcomes the invitation extended to him during the mission to be consulted on the draft law. He considers such cooperation an essential aspect of his mandate, namely, the promotion of the adoption and application of adequately defined counter-terrorism legislation in strict adherence to the principle of legality. Furthermore, he regards the prospect of drafting and adopting a proper counter-terrorism law in Peru as an opportunity to move away from the laws adopted by the Executive through delegated authority or even under the previous authoritarian rule, and to strengthen the rule of law by enacting in the form of parliamentary legislation a proper framework for measures against terrorism. The Special Rapporteur gives his views on what he considers to be the most serious shortcomings of current counter-terrorism legislation in the section below.

24. In its ruling of 3 January 2003 (see also paragraph 21 above), the Constitutional Court elaborated on the wording of article 2 in Decree Law No. 25.475 of 5 May 1992, which defines the basic crime of terrorism in State legislation. The Court, in its ruling, established guidelines that seek to guarantee that the principle of legality is respected, and that a restrictive interpretation is maintained through the requirement that article 2 only applies when all three elements codified in the provision have been proved (paragraphs 43-78bis of the judgement). The Special Rapporteur agrees with the formulation of the first element in the said article, that is, "any person who causes, creates or maintains a state of intimidation, alarm or fear among the population, or in any segment thereof"; he furthermore considers appropriate the reference to "acts against life" in the second element of the definition. He points out, however, that the second element thereafter moves to more open-ended criteria, starting with acts against the "physical integrity, health, freedom or safety of any person" and continuing with acts against "property, the security of public

buildings, any means of communication or transport, power or transmission towers, power plants or any other property or services", clearly departing, step by step, from the requirement of lethal or other forms of serious physical violence against members of the civilian population. Moreover, the reference in the third element of article 2 to "any other means capable of causing havoc or serious disturbance to peace or disruption of international relations or the safety of the public and the Government" gives the provision, as a whole, an open-ended character that may be applied beyond what is permissible under international law, since it does not adhere to the principle of legality enshrined in article 15 of the International Covenant on Civil and Political Rights. The Special Rapporteur recalls the importance of defining terrorism through the unjustifiable means it resorts to, also because this approach prevents the abusive application of counter-terrorism legislation, including through the stigmatization of other potentially criminal behaviour, which should not be associated with terrorism. In addition, broad and vague definitions of terrorism may contribute to reducing the distinctive force of this crime and the inexcusable nature of every single act of terrorism and, thereby, ultimately run the risk of undermining the legitimacy of counter-terrorism measures.

25. Currently, the terrorism threat in Peru is considered to be limited primarily to the VRAE region, where remnants of Sendero Luminoso are still operating, including by carrying out attacks against State security forces. Drawing on the abundant information provided to him during his visit, the Special Rapporteur learned that there are both ongoing forms of organized crime that represent the legacy of the old Sendero Luminoso as well as forms of an ideological discourse that maintain or legitimize its slogans. He is convinced that the current forms of organized crime in question, rather than following a discourse or a modus operandi of killing and terrorizing the civilian population, are based on an alliance with the large number of drug producers and traffickers operating in the VRAE region and mainly concentrate on "taxing" the transportation of drugs through and out of the regions controlled by the remnants of Sendero Luminoso. The Special Rapporteur acknowledges the complexities of this situation, including the fact that the extreme poverty in which a large proportion of the population in the VRAE region lives facilitates the recruitment of young people as drugs couriers and their falling under the ideological spell of Sendero Luminoso. However, he emphasizes the responsibility of State authorities to avoid a conceptual conflation of the crime of drug trafficking with terrorism for the purpose of triggering the application of counter-terrorism measures in a context where they are not appropriate.

B. Collaboration with terrorism and the crime of glorification

26. In article 4 of Decree Law No. 25.475, the crime of collaboration with terrorism is defined with reference to an extensive list of specific acts that are carried out with the purpose of contributing to the perpetration of terrorist crimes. From the chapeau of this article, however, it becomes clear that the criminalization of collaboration with terrorism is also targeted at the facilitation of "the achievement of the goals of a terrorist group", thereby indicating that sharing goals with a terrorist organization without a genuine connection to the perpetration of terrorist acts or with the organization itself would be reason enough to accuse and convict a person for collaboration with terrorism. The Special Rapporteur, acknowledging the assurances by the State authorities that criminal provisions on terrorism are only applied in cases where a clear link to the carrying out of actual terrorist acts can be established, recalls that the peaceful promotion of the same goals as those proclaimed by a terrorist organization may be perfectly legal. Any reference to goals per se in the context of the criminalization of terrorism can be erroneously applied and have serious consequences for the exercise of freedom of opinion and expression and related

rights to freedom of association and of peaceful assembly, as enshrined in articles 19, 21 and 22 of the International Covenant on Civil and Political Rights.

27. In penal legislation, as explained during the visit, there is a clear distinction between the crime of incitement and apology. Consequently, the crime of apology for terrorism, as established in article 316 of the Penal Code,[27] is constructed on the basis of "glorification (apology] of acts of terrorism or of a person that has been convicted as a perpetrator or accomplice in such act". As clarified by the Constitutional Court in its ruling of 9 August 2006, the social damage of this crime lies in the fact that it contributes to the justification of criminal acts and, above all, to the strategy used by the armed groups themselves. The criminalization of this act, hence, serves to protect, inter alia, the maintenance of the constitutional democratic order.[28] The Special Rapporteur has firmly advocated that, in order to avoid unjustifiable infringements on the right to freedom of expression, any act of "glorification" that may be subject to criminal proceedings should be linked to the crime of incitement, whereby the following two criteria must be fulfilled: (a) the element of an intent to incite other persons to commit acts of terrorism; and (b) a real risk that, as a consequence of such incitement, an act of terrorism will be committed by one or more persons. He recognizes that, in these conditions, the crime of incitement may legitimately cover symbolic or coded speech even where the intent to incite to terrorism is only indirectly identifiable in the actual words. Ultimately, however, it is up to the judge to determine in each specific case whether both elements of intent and risk have been proved. The wording of article 316 of the Penal Code, if applied literally, seriously risks leading to violations of article 19 of the International Covenant on Civil and Political Rights.

28. Related to this matter are the demonstrations that have been held at some Peruvian universities with the participation of former terrorist convicts and in connection to an amnesty request for Sendero Luminoso leaders currently serving prison sentences. Other instances include university teachers and students establishing study circles for the purpose of conducting political propaganda similar to that carried out by Sendero Luminoso before and during the internal armed conflict. The Special Rapporteur is deeply mindful of the horrific experiences connected to the organization's terrorist activities during those years, the suspicions and fear among segments of the population in relation to so-called "radical ideas", even when lacking the violent component, and fully acknowledges that action needs to be taken in order to effectively prevent terrorist acts from taking place in the future. He finds worrisome, however, the aggressive discourse maintained by some State officials that builds on a perceived need to neutralize any possible future agitation, and the pressure put on judges in this regard, although none of his interlocutors was able to inform him of the perpetration of a single act of terrorism within the context of the scenario described above. Considering the right to freedom of expression and related rights pertaining to freedom of association and peaceful assembly, he recognizes that States may take action, which, to a certain extent, interferes with the full exercise of these rights if certain conditions are met, including observing the principles of legality, necessity and proportionality, as established in the relevant provisions of the International Covenant on Civil and Political Rights.[29] In order to maintain a democratic society, however, the State has an obligation to ensure that channels are available for the peaceful expression of different, even radical, political ideologies. The State should take action to promote a climate where dissent is, to the greatest extent possible, met with initiatives for dialogue and a culture of peace. The Special Rapporteur reiterates that counter-terrorism measures taken at the cost of human

[27] Paragraph inserted through article 1, Legislative Decree No. 924, 20 February 2003.
[28] Judicial file No. 003-2005-PI/TC, 9 August 2006, paras. 238-239.
[29] A/61/267, paras. 9-29.

rights are not effective and may ultimately serve merely to incite violent expressions of protest.

C. Penitentiary benefits for terrorist convicts

29. Following the adoption of Law No. 29423 on 12 October 2009, persons convicted of terrorism and/or treason in Peru cannot claim penitentiary benefits that would allow for the reduction of their prison sentence on the basis of work or education, or that would grant them partial or conditional release. The law has retroactive effect with regard to all persons deprived of their liberty on the basis of terrorism sentences issued before it entered into force, despite the fact that, since February 2003, Legislative Decree No. 927 provides for proceedings, conditions and controls under which people convicted for terrorism may be granted conditional release following a case-by-case assessment by the judge. This interpretation does not depart from the jurisprudence of the Constitutional Court, according to which penitentiary benefits do not constitute fundamental rights, but are to be understood as guarantees aiming at the re-socialization and re-education of the prisoner. As clarified to the Special Rapporteur during his visit, the benefits cannot be claimed with reference to the principle of equality before the law or of legitimate expectations, since a convict's expectation upon sentencing is to serve the prison term in full. Moreover, since these provisions are to be considered of a procedural nature and not of substantive penal law, the principle of non-retroactivity is, according to the Constitutional Court, not applicable, the only exception being those requests that were filed, but not resolved, before the entry into force of the new law.[30]

30. During his visit, the Special Rapporteur was informed of a legislative proposal developed by the National Human Rights Council for the purpose of implementing the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Peru acceded on 14 September 2006. He notes with encouragement the Council's proposal to create an independent national preventive mechanism under the responsibility of the National Ombudsperson's Office. Such a mechanism is one of the main treaty obligations under the Optional Protocol and particularly important in the context of counter-terrorism, since persons detained as terrorist suspects often face an aggravated risk of torture. An effective preventive mechanism is indispensible to eliminate any temptation to resort to prohibited means of interrogation in the investigation of cases of terrorism.

D. States of emergency and the regulation of the use of force by the armed forces and the police

31. The declaration of a state of emergency, including for the purpose of fighting terrorism, is a tool frequently used by the Government. Peru is one of the very few countries to have invoked article 4 of the International Covenant on Civil and Political Rights with reference to terrorism when declaring a state of emergency. In recent years, this measure is used to a much lesser extent than during the internal armed conflict when, at times, approximately 50 per cent of the population was subjected to an emergency regime of political-military commands that controlled more than 20 per cent of the national territory, including the civilian authorities operating in these areas. Inside the VRAE region, however, the state of emergency under the control of the armed forces was still in force at the time of the visit owing to the ongoing activities in the region of the remnants of Sendero

[30] See for example judicial file No. 00267-2008-PHC/TC, 7 October 2008, paras. 4-6.

Luminoso. The Special Rapporteur notes the adverse consequences of this situation for displaced communities that are still waiting to return.

32. Legislative Decree No. 1095, which was promulgated on 1 September 2010, regulates the application and use of force by the armed forces within the national territory. The Special Rapporteur is greatly concerned about provisions in the Decree that determine international humanitarian law to be applicable in areas where the armed forces, following a declaration of a state of emergency, have taken control over the internal order for the purpose of confronting a "hostile group". Firstly, international humanitarian law is applicable only where the objective facts on the ground prove the existence of an ongoing armed conflict between identifiable parties capable of and organized for conducting armed hostilities and, therefore, cannot be triggered by a domestic decision authorizing military forces to exercise the powers of the State in an area, as is presupposed in article 5.1 of the said Decree. Secondly, the definition of "hostile group" in article 3 (f) as "being minimally organized, having the capacity and intention to confront the State in a prolonged manner by means of fire arms, pointed and sharp items or blunt objects in quantities, and participating in the hostilities or collaborating in their realization" is so broad that it would encompass social protest movements not carrying firearms, and, consequently, trigger the application of international humanitarian law in situations of low-level violence not amounting to an armed conflict.

33. Whereas under international humanitarian law it may be lawful for the State to use lethal force against persons who participate in hostilities, the Special Rapporteur emphasizes that, in any other situation, the use of armed force must be considered a measure of last resort and be carried out only in strict compliance with the principle of necessity and in accordance with the rules and regulations on the use of firearms.[31] He is concerned that the wording of article 27 of Legislative Decree No. 1095, by extending military jurisdiction to include any "illegal acts" committed by the military under the application of the said Decree or in the exercise of their duties, appears to go in the opposite direction by potentially allowing military courts to decide on cases of excessive use of force and even human rights violations.

34. The deployment of the armed forces, including by means of a state of emergency has, on occasion, been used by the Government for the purpose of handling situations of mass demonstrations and other public expressions of protest against State policies.[32] The Special Rapporteur is aware that social conflicts in the country are often generated by State-driven development strategies aimed at the exploitation of natural resources and their adverse environmental, social, economic and cultural impact as experienced by indigenous peoples and peasant communities. He is concerned that indigenous leaders have been charged with terrorist offences for what clearly appears to be peaceful activities in defence of their livelihood. Such instances, which may reflect a trend of criminalizing social protest in Peru,[33] confirm highly worrying tendencies to apply the broad definition of terrorism used in article 2 of Decree Law No. 25.475 on acts that are not related to actual terrorism. In Cusco, the Special Rapporteur was informed of an incident in which the police had wrongly identified participants in a demonstration organized by a local community as associating with Sendero Luminoso. In Ayacucho, the Special Rapporteur interviewed in prison two indigenous community leaders who had already been detained for several months awaiting trial for terrorism but had not been informed, or were unaware, of any specific acts to which the charge related. Against this background, the Special Rapporteur is deeply concerned

[31] See for example Principle 11 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and articles 2 and 3 of the Code of Conduct for Law Enforcement Officials.

[32] See for example Supreme Decree No. 027-2009-PCM, 8 May 2009.

[33] See for example article 2 of Legislative Decree 982, amending article 200 of the Criminal Code.

that the wording of Legislative Decree No. 1095 may be applied to protesters taking part in demonstrations, including by indigenous people who legitimately claim the right to advance and informed consent in matters concerning the use of their lands. He notes that, at the time of the visit, the domestic implementation of ILO Convention No. 169 through the law on the right to previous consultation by indigenous peoples had still not been adopted.

E. Stigmatization of human rights defenders

35. The Special Rapporteur notes the existence of a dynamic and independent human rights community present in different sectors of Peruvian society. He is, however, worried about the marked ambiguity with which the concept of human rights is characterized in Peruvian public discourse and the tendency to polarize retrials, seeking to ensure a fair trial for persons convicted for terrorism during the internal armed conflict, and trials against members of the State security forces accused of human rights violations during the same period. Related to this issue is the frequency with which different categories of people, including indigenous peoples, peasant and other communities, as previously mentioned, but also non-governmental organizations, lawyers and church organizations actively working for the advancement of human rights in the country are depicted as being associated with terrorism, both in the media and, most worrisome, in pronouncements made by certain high-level Government officials. Such tendencies could not only risk supporting illegitimate action against peaceful human rights advocacy, but also confuse the fundamental understanding that each and every individual is entitled to enjoy and claim all their human rights.

IV. Conclusions and recommendations

A. Conclusions

36. **Following 20 years of widespread terrorist violence provoking counter-measures of a repressive and highly militarized nature by State security forces, Peru provides, by means of a series of initiatives, important lessons with regard to the provision of justice and compensation for the suffering caused by the internal armed conflict. It is, however, troubling that, while the national economy is steadily growing, the most vulnerable and exposed sectors of Peruvian society, which because of discrimination and poverty were the most affected by the terrorist violence and human rights violations committed during the conflict, have still not received proper compensation. An additional concern is the prevailing tendency in political discourse of some sectors to associate human rights and their defenders with terrorism. The Special Rapporteur firmly believes that the Government should spare no effort to reverse this trend and actively support the promotion of international human rights standards at all levels of Peruvian society. Such action will help to ensure that all victims of the conflict, whether victimized by terrorist attacks or by counter-terrorism measures, are treated equally and will contribute to the building of bridges between different social strata. In addition, it will also have crucial implications for the success of current and future counter-terrorism measures and for the promotion of a climate of peace, where past experiences of systematic practices of human rights violations, including by members of State security forces, will not take place again.**

37. **The Special Rapporteur is concerned about provisions on terrorism in State criminal legislation, the application of which risks going beyond actions that can legitimately be labelled as terrorism. Against the number of claims and instances indicating an increasing criminalization of social protest in the country, he wishes to**

emphasize that the frequent deployment of military forces, not only as a counter-terrorism measure but also in situations of mass demonstrations, seriously risks causing a militarization of conflicts that should not be settled by the armed forces. While recognizing that the population in all parts of the country needs to be protected by security forces, the Special Rapporteur urges Peru to strengthen the presence of all levels of State services and authorities even in the most remote areas of the country and, thereby, ensure that trust and cooperation can be established, or re-established, between rural and indigenous communities and the central Government.

B. Recommendations

38. **While emphasizing the need to promote in the public domain the understanding of the concept of human rights as a comprehensive set of international and legally binding standards that belong equally to all human beings, the Special Rapporteur urges the Government of Peru to counter, within the limits of the right to freedom of opinion, expression and the media, the stigmatization of human rights and their defenders as being associated with terrorism in political and media discourse. He also urges the Government to distance itself actively from statements to that effect. Equal recognition and treatment should be given to all victims of the conflict, including those wrongly accused and convicted of terrorism.**

39. **The effective implementation of collective reparations programmes and full recognition by the State of indigenous, rural and other affected communities, particularly women, as victims of the violence constitute the cornerstone of the reconciliation process and an important element in the fight against the discrimination and marginalization that affect many members of the Peruvian population. The Special Rapporteur recommends that action be order to ensure effective coordination between different levels of Government, including between the legal mandates and allocation of resources assigned to implement measures, that sufficient resources are made available, and, most significantly, that the effective execution of collective reparations is considered a priority on the official agenda.**

40. **The Special Rapporteur calls upon the Government of Peru to recognize fully the cultural and traditional distinctiveness of indigenous peoples and to initiate inclusive policies with regard to their communities, while taking into account the preservation of their cultures. In the view of the Special Rapporteur, this should be seen as an element in addressing conditions conducive to the recruitment to terrorism and in a strategy of building a society without terrorism. He recommends that the Government proceed with the swift adoption of the law on the right to advance consultation of indigenous peoples in accordance with the State's international obligations and in conformity with ILO Convention No. 169.**

41. **While expressing his deep concern at discrimination against women, which is persistent on multiple levels, the Special Rapporteur recommends that measures be taken to guarantee the full participation of women in the implementation of collective reparation programmes. Furthermore, he urges the State to ensure that women subjected to gender violence, including the numerous cases of rape perpetrated during the internal armed conflict, have access to reparations and, when appropriate, receive all necessary assistance to obtain criminal justice remedies, while taking fully into account the sensitivity and specific impact of gender violence on women.**

42. **The Special Rapporteur recommends that measures be taken to facilitate the work of the Reparations Council in order that the procedures allowing all beneficiaries of the individual economic reparation programmes to receive promptly the compensation to which they are entitled as victims may be finalized, in accordance**

with Law No. 28592 and its regulation and the recommendations of the Truth and Reconciliation Commission.

43. **With regard to criminal proceedings concerning human rights violations committed by members of the State security forces during the two decades of violence, the Special Rapporteur recognizes that important steps have been taken to bring those responsible to justice and to sanction them. However, noting a series of elements impeding the resolution of the many remaining cases, he recommends that the Government of Peru:**

(a) Provide its support for and establish mechanisms to ensure that prosecutors and judges, to the highest degree possible, have the cooperation of the Ministry of Defence when requesting information on serving officers who are subject to criminal investigations or charges, and the use of aliases by military personnel during the conduct of counter-terrorism operations;

(b) Ensure that sufficient resources are provided for the purpose of effectively implementing the witness protection programme and that measures are taken to guarantee safety and security for all actors taking an active part in the resolution of these cases;

(c) Ensure that obstacles for prosecution and conviction for grave human rights violations in the course of counter-terrorism operations, such as those based on a statute of limitations in domestic law, are overcome in accordance with the jurisprudence of the Inter-American Court of Human Rights and applicable international human rights law.

44. **While welcoming the invitation by members of the Public Prosecutor's office to provide his comments on the draft counter-terrorism law in preparation, the Special Rapporteur expresses his wish to receive a draft as soon as possible, and takes this opportunity to make the following preliminary recommendations in relation to current criminal legislation regulating terrorist offences:**

(a) Article 2 of Decree Law No. 25.475 should be brought into compliance with the principle of legality as enshrined in article 15 of the International Covenant on Civil and Political Rights and be, at the same time, formulated in a manner that restricts its application to crimes of a genuinely terrorist nature;

(b) Article 4 of Decree Law No. 25.475 should be amended with the purpose of abandoning any reference to the promotion of goals of a terrorist organization as being an object of criminalization per se, and securing that any act falling under the provision be foreseeable on the basis of clear and precise formulations;

(c) The criminalization of glorification of or apology for terrorism, as established in article 316 of the Penal Code, should be amended to comprise acts that include any intent to incite the commission of terrorist acts and the risk that such acts are, in fact, committed as a consequence.

45. **The Special Rapporteur calls upon the Government of Peru to abandon its practice of delegating authority to the executive branch to legislate on terrorism, and recommends that a legislative counter-terrorism framework be enacted through proper parliamentary proceedings.**

46. **Recalling that terrorist suspects belong to a category of detainees that is potentially vulnerable to illegal interrogation techniques, including torture and ill-treatment, the Special Rapporteur recommends that Peru establish, as soon as possible, an independent national preventive mechanism overseeing national detention facilities in accordance with its obligations as envisaged by the Optional Protocol to**

the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;

47. **The Special Rapporteur expresses his grave concern at the adoption of Legislative Decree No. 1095, which is based on a serious misconception of the legal application of international humanitarian law. Furthermore, he is deeply concerned about the definition of "hostile group" in the law, which appears to be directed at social protests carried out by indigenous peoples' rights movements. The Special Rapporteur urges the Government of Peru to repeal the law and to confine declarations of a state of emergency and the deployment of military forces to only exceptional and temporary situations.**