



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

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Summary record of the 1099th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 31 October 2012, at 3 p.m.

Chairperson: Ms. Gaer (Vice-Chairperson)

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The meeting was called to order at 3.05 p.m.

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

Sixth periodic report of Peru (continued) (CAT/C/PER/6)

In the absence of the Chairperson, Ms. Gaer (Vice-Chairperson) took the Chair.

1. *At the invitation of the Chairperson, the delegation of Peru took places at the Committee table.*
2. **Mr. Ávila Herrera** (Peru), referring to the corporal punishment of children, said that legislation existed to protect the physical integrity of children and adolescents. The Criminal Code also sanctioned harm against a child as an aggravating factor. There had previously been no specific legislation in place on corporal punishment, but a bill had been submitted to Congress on the prohibition of the use of any corrective measure that harmed the physical integrity of children.
3. With regard to the establishment of a national mechanism for the prevention of torture and the allocation of resources for that purpose, a bill was pending before the Executive. A second bill had recently been submitted, and a consensus on its exact wording was now needed.
4. On the question of women deprived of their liberty and their children, the prison service was taking steps to guarantee suitable conditions for female prisoners. Women could be relocated to prevent overcrowding, and the competent authorities were developing programmes to support the children of mothers in prison. Measures were also being taken to improve prison conditions, especially with regard to overcrowding, including substantial investments in upgrading infrastructure, building new prisons and strengthening prison security and safety in order to meet international standards.
5. Challapalca prison was used for reasons of public safety in view of the large number of prisoners involved in organized and violent crime. Overcrowding and poor infrastructure posed additional difficulties. The Government was carrying out studies with a view to constructing new high-security prisons for dangerous prisoners. Yanamayo prison, near Puno, had been converted into a medium-security prison for ordinary criminals. A decision to close Challapalca prison could only be made once the plan to expand the capacity of the prison system had been implemented.
6. Solitary confinement was a measure imposed for a specific duration and implemented in accordance with the relevant legal provisions. It was not applied to pregnant women or mothers. Prisoners would be placed in solitary confinement in their own cells or in special areas, but still had the right to legal counsel and family visits. The measure was rarely used in provincial prisons.
7. The prison at the naval base in Callao was also used for security reasons and held criminals who were dangerous and difficult to reintegrate into society. It was a high-security facility, operating in conformity with international standards relating to visits, legal representation and access to treatment programmes.
8. Among significant cases involving the interpretation of the offence of torture, in November 2011 a case comprising allegations of torture against a prison governor had been brought to court. The specific nature of the offence of torture had been highlighted, and the court had invoked the Convention against Torture.
9. With regard to torture and sexual violence, a case had recently come before the courts involving a victim who had been tortured and raped. The prosecutor and presiding

judge had defined the offence as torture, reflecting the fact that Peruvian judicial officials followed international standards in considering rape as a form of torture.

10. **Mr. Cubas Villanueva** (Peru) said that statistics on torture were kept and had been included in the report. Not all cases containing allegations of torture presented before the Attorney-General's Office met the legal criteria to be classified as cases of torture, and not all cases resulted in convictions. However, if a sentence was handed down, it involved imprisonment, as stipulated in the Criminal Code. Certain cases resulted in acquittal due to a lack of evidence or reasonable doubt. In all cases, the presiding judges were impartial and independent, and due process was respected.

11. Training on the subject of torture was provided to public prosecutors and judges, in cooperation with NGOs and academic institutions.

12. With regard to financial and psychological support for victims, the Attorney-General's Office had, as part of a comprehensive process of reform, launched a national support programme for witnesses and victims. The new Code of Criminal Procedure provided for protection measures for victims. Support and protection measures included financial support for witnesses who had to travel to give their statements.

13. All cases of torture were referred to the Institute of Forensic Medicine for assessment by experts. The Institute was able to perform psychological evaluations and, since 2010, had had a specialized team of psychiatrists, forensic doctors and psychologists. It was active at the national level and provided support to its various units throughout the country.

14. The Attorney-General's Office had been asked to assess the possibility of creating a central register of cases of torture. That was feasible, given that there was a national electronic database for all crimes.

15. Pretrial detention was a period of detention consistent with the provisions of the 1940 Code of Criminal Procedure. However, it was an exceptional and provisional measure, and no one could be detained for longer than 36 months without trial. Since 2004, steps had been taken to progressively implement a new criminal procedure system. Under the new Code of Criminal Procedure, pretrial detention was more strictly regulated. In areas where the new Code was in force, the prison population included more convicted prisoners and fewer persons awaiting trial, and no one could be detained for longer than 9 months.

16. The provisional status of judges was a problem inherited from the period when Alberto Fujimori had been in power. Since the return to democracy, efforts had been made to address the problem.

17. All cases of torture were dealt with by a specialized subsystem consisting of the Public Prosecutor's Office and the National Criminal Division, responsible for the investigation and prosecution of such cases. The case of Gerson Falla was being investigated, and a number of persons were on trial for offences including aggravated torture, abuse of authority and obstructing the course of justice.

18. In connection with the Bagua case, he said that cases of human rights violations were tried in the ordinary courts. After the events in Bagua, involving the deaths of 33 persons, the military court had launched proceedings against various national police officers for failing in their duties. In the ordinary courts, criminal proceedings relating to crimes of aggravated homicide and grievous bodily harm were currently under way. In the Celendín and Bambamarca cases, preliminary investigations were under way.

19. On the question of forced sterilization, the Attorney-General's Office had decided to reopen investigations into such cases and, to that end, had extended the competence of the Supra-Provincial Prosecutor's Office in Lima. Complaints had been received from groups

of women whose cases had not been investigated. The State party would inform the Committee of the results of those investigations in due course.

20. As part of measures to establish the whereabouts of missing persons, a comprehensive strategy had been implemented to address the problem, with the support of the International Committee of the Red Cross. The aim was to exhume bodies for humanitarian reasons, allowing them to be returned to their families. The Attorney-General's Office had a forensic programme, drawn up and approved on an annual basis, with the participation of representatives of victims' organizations. The Office had a modern laboratory, providing technical support for investigations and DNA analysis. A specialized forensic team also existed and had recovered over 2,000 bodies to date.

21. There was indeed legislation in place to sanction persons who forced workers to work in inhumane conditions.

22. The use of the Istanbul Protocol was decided by an expert in all cases involving allegations of torture. Experts in the fields of thanatology and forensic science applied the international provisions of the Minnesota, Tokyo and Istanbul Protocols in their assessments of suspected cases of torture.

23. **Mr. Delgado Gutiérrez** (Peru) said that there was a legal framework in place to regulate the use of force by the police; the proportionate use of force formed part of the institutional culture of the police and security forces. There were regulations, guidelines and procedures relating to the use of force, including a human rights manual for the police and a police code of conduct. Following incidents involving the excessive use of force in 2011, the police had been reminded that their actions must comply with the national and international legal provisions regulating the use of force, and that the human rights manual should be used throughout police training. No legal provisions regulating the use of force by a police officer exempted him or her from personal responsibility.

24. With regard to the prevention of violence, measures were taken to prevent violations of human rights in the form of training courses organized by the Ministry of Defence, human rights training, and refresher courses with a focus on human rights.

25. In response to Mr. Wang Xuexian's suggestion concerning assessment of the impact of training received by public officials, the competent authorities would give it serious consideration.

26. **Mr. Mesones Castelo** (Peru) said that under the military legal system, in cases of alleged torture victims, including young recruits, or their families could contact the military personnel assistance office, which would investigate the matter and verify whether torture had taken place. If it had, the case would be passed to the public prosecutor. The jurisdiction of the military courts did not extend to serious human rights violations. Those were the responsibility of the ordinary courts.

27. On the question of the role of the armed forces during the period of violence in Peru, it was difficult to access the relevant documents in the army archives. However, the Ministry of Defence was trying to make investigations as effective as possible and ensure that those responsible were brought to justice. Under current legislation, a report had to be submitted at the start and end of all military operations.

28. The use of firearms was regulated by Legislative Decrees Nos. 1094 and 1095, which stipulated that they must be used only in self-defence or to defend others, and only if less extreme measures had proved inadequate. It was further stipulated that members of the armed forces who employed firearms must submit a written report to their superior officer. The use of firearms was thus properly regulated and there was no impunity for personnel found guilty of offences.

29. **Mr. Hurtado Riquelme** (Peru) said that the use of force by the armed forces was regulated by the provisions of Legislative Decree No. 1095, and the directive issued by the joint command on the involvement of the armed forces in emergency situations and measures to support the police. Training on human rights and international humanitarian law was given to members of the armed forces.

30. **Mr. Burneo Labrín** (Peru) said that under the military justice system only military personnel who had committed offences could be tried, and then only if the case met three requirements: the perpetrator must be in active service, the offence must have been committed during active service and the offence must have infringed a legal requirement of the armed forces, such as discipline or obeying orders from a superior. Ordinary offences, serious violations of human rights and international crimes, such as crimes against humanity, were tried by the ordinary courts, in accordance with the Rome Statute of the International Criminal Court.

31. The offence of torture was not subject to the statute of limitations in Peru and there was no amnesty for torture. It should be noted that in 2009 the Supreme Court of Justice had convicted the former president of Peru, Alberto Fujimori, on the basis of peremptory norms of international law that viewed killings as crimes against humanity, rather than on the basis of treaty law.

32. Recent years had seen the gradual development of legislation and jurisprudence, which ensured that the general public enjoyed improved protection against violence, and the Constitutional Court had ruled that human rights had constitutional rank.

33. With regard to the rights of lesbian, gay, bisexual and transgender persons, article 37 of the Code of Constitutional Procedure provided for the right not to be discriminated against on the grounds of sexual orientation. While no single legal provision established criminal sanctions for discrimination on the grounds of sexual orientation, article 323 of the Criminal Code stipulated that any discrimination on sexual grounds was punishable, wording that was viewed as having a broader scope than references to sexuality. There were also rulings on various related topics, such as discrimination in the workplace, and a number of regional governments had expressly prohibited discrimination based on sexual orientation and introduced corresponding protective measures. There was no monitoring of discrimination on grounds of sexual orientation but the issue was being considered, with the involvement of stakeholders, during the drafting of a human rights bill.

34. No system was in place to monitor and implement follow-up action on the Committee's recommendations, but there were plans to establish a system to oversee follow-up action for all the human rights treaty bodies to which Peru reported.

35. **Ms. Suárez Salazar** (Peru) said that a comprehensive plan for redress ensured that victims of violence, including torture, were covered by health insurance, which encompassed physical and mental health, as well as prevention, diagnosis, treatment and rehabilitation. A law adopted in 2009 ensured that treatment could be received in a medical centre simply by presenting an identity document; no other documents were required. Special teams provided mental health care in the areas worst affected by violence, and guidelines had been published on providing psychological and social support to the families of disappeared persons.

36. Abortion was legal only if it was essential to save the mother's life, in cases of rape, or when continuing the pregnancy could cause permanent injury. No complaints had been lodged concerning the use of the abortion law in 2011.

37. **Mr. Chávez Basagoitia** (Peru) said that his Government had taken the necessary steps to submit the Convention on the Reduction of Statelessness to Congress.

Consultations on the Convention relating to the Status of Stateless Persons had not yet been completed.

38. The border police received no special training on dealing with asylum seekers or persons claiming refugee status, since most of those involved were able to enter Peru freely and could file a claim for asylum or refugee status with the relevant department of the Ministry of Foreign Affairs in the capital. There was no information indicating that asylum seekers or refugees had been turned away at the border or that persons returned to their countries of origin had suffered violations of their rights. The principle of non-refoulement was applied in all cases, with the sole exception of persons who were considered to represent a danger to Peru.

39. A state of emergency could only be declared in exceptional circumstances and could last no longer than 60 days. Although the area currently under a state of emergency might appear extensive, in reality only 6 per cent of the population were affected. A state of emergency imposed restrictions on personal liberties and movement, and the authorities or courts could verify that it complied with legal requirements at any time. The military courts were able to try cases during a state of emergency but certain procedures were never suspended, such as habeas corpus.

40. Peru was a global leader on the rights of indigenous peoples and had been involved in the initial negotiations on establishing the United Nations Declaration on the Rights of Indigenous Peoples. Various legislative instruments were in place to protect indigenous peoples, including laws on forestry and the use of hydrocarbons.

41. Regarding allegations of forced labour and debt servitude in remote areas, a national commission had been established to eliminate forced labour, a team of inspectors had received relevant training and the International Labour Organization had assisted in drafting a national plan of action on forced labour. The maximum fine for employers who were complicit in trafficking or forced labour was US\$ 27,000.

42. **Mr. Ávila Herrera** (Peru) said that the Ministry of Justice had studied the possibility of increasing compensation payments for victims of violence and had taken steps to ensure that more people could benefit from such payments. Although there were delays in preparing the list of beneficiaries, it was likely that some 10,000 individuals would receive compensation. There were many cases of proper redress being provided to victims of torture.

43. The Inter-American Court of Human Rights had investigated the Barrios Altos case and ruled that the Peruvian State should use its internal machinery to correct the sentence handed down, since it was incompatible with the criteria established by the Inter-American Court and the Constitutional Court of Peru.

44. The competent authorities had received a request for a pardon for Alberto Fujimori that did not bear his signature. The relevant commission had therefore requested that Mr. Fujimori should sign the request himself, but no response had so far been received.

45. The ombudsman for children's rights was a member of the Ombudsman's Office and had a legal responsibility to protect and promote the rights of children and adolescents.

46. **Ms. Sveaass** (Country Rapporteur) asked for further details on the professional mental health teams involved in providing support to victims of violence, and whether care would be provided through the public health service or whether it would be outsourced by the Government to other organizations.

47. Although no impunity existed in Peru, the high numbers of persons absolved of crimes, in large part owing to lack of evidence, raised the question whether the relevant laws were unclear. More details on the penalties handed down in recent cases of torture

would be useful, since the statistics provided did not indicate whether guilty persons were being sentenced to the long prison terms applicable. While it was clear that military courts had limited jurisdiction, she asked who monitored the cases that came before them. The one case of rape that had been considered torture was significant and she would appreciate reference details for that case.

48. Expressing concern at legal measures on involuntary treatment and the use of restraints in psychiatric hospitals, she asked what measures provided legal safeguards for hospital patients. She asked for up-to-date information on the process of investigating decisions handed down by so-called faceless judges in the 1990s.

49. More details on the National Plan for Forensic Anthropological Investigations would be welcome, including whether the pace of retrieval of bodies would be increased, given that there was such a large number of burial places. Alternative sources had indicated that remains found were not released to families for as long as any related legal case was continuing. Could the delegation confirm whether that was so?

50. **Mr. Wang Xuexian** (Country Rapporteur) said that the written replies provided by Peru stated that under the new Criminal Code pretrial detention was only used in exceptional circumstances. To clarify whether the new Code was effective, he asked whether there had been any new cases of pretrial detention since its entry into force. He understood that sentences had been imposed on a number of persons involved in the killing of Gerson Falla. Could the delegation provide detailed information on those sentences?

51. Three particular cases of violence by law enforcement officials were major causes of concern. The 2009 incident had already been investigated and victims had received compensation, raising the question whether more recent incidents in 2011 and 2012 — which had together resulted in seven deaths and left over 40 persons injured — had been investigated yet, particularly with regard to the proportionate use of force. He asked what lessons had been learned from the investigation of the 2009 incident and whether the delegation might have any guidance to offer on investigating such incidents.

52. **Mr. Bruni** welcomed the news that financial provision would be made for the functioning of the national preventive mechanism, as required by the Optional Protocol to the Convention.

53. He drew the State party's attention to a report of the Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment (A/66/268), which urged States to prohibit the imposition of solitary confinement because it caused a number of irreversible physical and psychological traumas. In the light of the findings in that report, he called on the State party to substantially reduce the amount of time detainees spent in solitary confinement, if not abolish the practice altogether.

54. While he appreciated the need for high-security prison facilities, the international community had repeatedly recommended that the prisons at Challapalca and Yanamayo should be closed owing to the harsh conditions in those remote Andean locations. After a visit in 2002, the Inter-American Commission on Human Rights had stated that both prisons were unfit for purpose and had recommended that all detainees should be transferred to other prisons. He asked whether the inmates of the maximum-security prison at Callao naval base still suffered from the sensory deprivation and solitary confinement that had been reported in the past, which constituted a form of torture in the Committee's opinion.

55. **Ms. Belmir** said that, since so many complaints against members of the police and the armed forces had been brought during states of emergency in the State party, she would appreciate the delegation's comments on possible alternatives to the state of emergency.

She wondered why those complaints had resulted in so few convictions and so many acquittals.

56. She would appreciate the delegation's response to reports that (a) individuals accused of treason or subversion were often held in custody for up to 2 weeks before being brought before a judge, and (b) judges were often unable to enforce the rights of those detainees owing to pressure exerted by the military and the police. She asked whether the military courts that considered such cases fulfilled all the guarantees of a fair trial and respected all detainees' rights, including the right of appeal.

57. **Mr. Mariño Menéndez** requested additional information on the contents of the bill on femicide and its expected date of adoption. He wished to know whether the Asylum Act made specific reference to the fact that persons who were denied diplomatic asylum should not be returned to their countries of origin without explicit guarantees that their safety was not at risk. He asked whether war crimes that had allegedly been committed by members of the armed forces during the internal armed conflict fell under the jurisdiction of the military or civil courts.

58. **Mr. Gaye** requested clarification of the maximum period of pretrial detention. If it was indeed 3 years, as he had understood, he wished to know what circumstances could lead to such prolonged detention. It would also be useful to know whether the Code of Criminal Procedure dating back to 1940 was still in force in some areas and, if so, why the new Code had not been brought into force throughout the country.

59. **The Chairperson** asked whether the State party had considered setting up a mechanism that would serve as a focal point to prepare reports to the United Nations treaty bodies and disseminate their concluding observations. She would welcome the delegation's comments on whether the compensation being paid to victims of the internal armed conflict was adequate and commensurate with the suffering they had endured. It would be useful to know what steps were being taken to ensure that the large number of people who had been internally displaced as a result of the conflict also received redress. She asked whether women and girls who sought medical attention after a clandestine abortion were required to identify the person who had performed the abortion, as that could constitute a violation of article 15 of the Convention. She wished to know whether the State party planned to decriminalize abortion.

60. **Mr. Ávila Herrera** (Peru) said that the national association of victims of the political violence in Peru had demanded that the amount of compensation should be increased from the current 10,000 nuevos soles to 38,000. The Ministry of Justice was looking into the possibility of increasing the amount, in conjunction with the Ministry of Economy and Finance. Compensation was currently being paid to about 10,200 individuals and at least 6,000 more would receive compensation in the future. The Government had allocated some 100 million nuevos soles for such compensation.

61. Military courts did not handle any cases involving human rights violations. In the wake of the 2009 clashes in Bagua, some members of the armed forces had been tried in military courts on charges relating to their professional responsibility, but all human rights issues had been handled by civil courts.

62. The establishment of the Vice-Ministry of Human Rights had been a significant achievement for his country and there were high hopes for the progress it would accomplish. It was responsible for promoting legislative reform that would increase the State's conformity with international human rights standards. Together with the National Human Rights Council, it was also in charge of implementing the United Nations treaty bodies' concluding observations.

63. The Vice-Ministry would consult with the prison authorities to examine the issue of the impact of isolation in the maximum-security prison at Callao naval base. New regulations had been introduced at the prison in 2001 and civilian prison staff coordinated with naval base personnel to ensure that the conditions in the prison were in line with international standards. Steps would be taken to continue improving the standards of treatment and security at Challapalca prison. Yanamayo prison was no longer a high-security prison; all the detainees held there were from the surrounding area.

64. The reform of criminal procedure had begun in 2006, when the new Code of Criminal Procedure had come into force in 1 of the 31 judicial districts in the country. Implementation of the new Code had now been extended to 23 districts and was expected to cover the entire country by 2015 at the latest.

65. **Mr. Cubas Villanueva** (Peru) said that trials were no longer conducted by so-called “faceless judges” in his country. They had been introduced under the presidency of Alberto Fujimori in 1992. A 2001 ruling of the Constitutional Court had rendered null and void all trials before faceless judges; all the cases concerned had been subjected to proper judicial review.

66. The Government was urging the Institute of Forensic Medicine to speed up the process of recovering and identifying the bodies of victims of the political violence. The bodies were handed over to family members as swiftly as possible, but in some cases no family members came forward.

67. Since 1991, the maximum period of pretrial detention had been 18 months, but it could be extended to 36 months in exceptional circumstances. However, in practice it lasted no more than 9 months. Only individuals accused of serious offences such as acts of terrorism were held in pretrial detention.

68. The case of Gerson Falla was being handled in the civil justice system. It was currently in the criminal investigation phase, which would come to an end in November 2012. The senior prosecutor would no doubt argue that the perpetrators should be tried for aggravated torture. No cases of terrorism had been handled in the military justice system since 2000.

69. **Ms. Suárez Salazar** (Peru) said that mental health legislation adopted in 2009 had introduced the possibility of making private health services available to patients under the comprehensive health insurance scheme. The law on the institutionalization of persons with disabilities had been amended in 2012; it now provided that all persons must give their informed, free and voluntary consent before being institutionalized, except in an emergency. Another 2012 legislative amendment had provided that women with mental disabilities must give their informed, free and voluntary consent before being sterilized. The law on rehabilitation centres for drug addicts and alcoholics had also been amended to ensure that patients’ rights to high-quality services and treatment were upheld at all times. The Government would re-examine the issue of abortion.

70. **Mr. Burneo Labrín** (Peru) said that, while the Government did not currently have a mechanism in place to follow up United Nations treaty bodies’ concluding observations and recommendations from special procedures of the Human Rights Council, it was hoped that the Vice-Ministry of Human Rights would play that role in the future. The Vice-Ministry also planned to analyse and monitor the domestic jurisprudence on torture as part of its general monitoring mechanism, which would ensure harmonization between the regions and government departments. The process of incorporating the Rome Statute of the International Criminal Court in the Peruvian Criminal Code was currently under way.

71. **Mr. Chávez Basagoitia** (Peru) said that a state of emergency was declared only as a last resort. In those circumstances, not all rights were restricted; the restrictions were

limited to rights relating to freedom and personal security, the inviolability of the home and freedom of assembly and transit. Such restrictions had enabled the armed forces to assist the police in locating and arresting the leaders of terrorist groups.

72. **Ms. Sveaass** urged the Ombudsman's Office to follow up on the implementation of the plans for redress for the victims of political violence.

73. **Mr. Ávila Herrera** (Peru) assured the Committee that the Vice-Ministry of Human Rights was committed to implementing the National Human Rights Plan and discharging its other duties.

74. **The Chairperson** thanked the delegation for the fruitful, constructive dialogue it had held with the Committee and invited it to submit any additional replies in writing within 24 hours.

The meeting rose at 6 p.m.