PERU[[1]](#footnote-1)

300. The Committee began the consideration of the second periodic report of Peru (CCPR/C/51/Add.4) at its 1133rd to 1136th meetings (forty-fourth session), held from 31 March to 2 April 1992 (CCPR/C/SR.1133-1136). The Committee decided/ at the request of the Government of Peru, not to conclude the consideration of that report until its forty-fifth session and to take into account the additional information offered by the State party that was to be supplied in response to the unanswered queries and concerns of Committee members. Subsequently, after it had become aware of the events that had occurred in Peru on 5 April 1992, the Committee decided, at its 1148th meeting held on 10 April 1992, to request that a supplementary report dealing with those events, particularly in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant, should also be submitted to it for consideration (together with the additional information) at its forty-fifth session. After noting the additional information provided by the Government of Peru

(CCPR/C/51/Add.5) and after considering the supplementary report on the effects of the events occurring after 5 April 1992 (CCPR/C/51/Add.6) at its 1158th to 1160th meetings, held on 20 and 21 July 1992 (CCPR/C/SR.1158-1160), the Committee concluded its consideration of the second periodic report of

Peru. (For the composition of the delegation, see annex VIII.)

301. The report was introduced by the representative of the State party, who said that the current dynamics of terrorist violence in Peru had prevented the Government from giving full legal scope to the promotion and observance of civil and political rights. As an illustration of the troubled situation in Peru, the representative explained that the Public Prosecutor for Terrorism, who was the person originally designated to present the report to the Committee, was not able to come owing to death threats from the Shining Path (Sendero Luminoso) terrorist group. In such difficult circumstances, the Peruvian Government had nevertheless developed a comprehensive human rights strategy that had led to the issuance of new legislative decrees and the adoption of other provisions to deal with human rights problems involving civil and political rights. Those new measures included the promulgation of the new Penal Code, the establishment of the Council for Peace, the delegation of authority to government inspectors during states of emergency, enhancement of the powers of political authorities in zones of states of emergency where the armed forces had assumed control, the setting up of a register of detained persons and the implementation of a national plan for publicizing and teaching the Constitution of Peru ana" human rights instruments. Constitutional and legal framework within which the Covenant is implemented in particular during the state of emergency.

302. With respect to that issue, members wished to receive information or clarification concerning measures to bring Peruvian legislation in line with the Covenant; the remedies of habeas corpus or amparo; the functions and operation of the legal system; the rights derogated from during the successive states of emergency and the resulting impact on the exercise of the rights guaranteed under the Covenant; effective remedies for violation of human rights during a state of emergency; the respective powers of the Government as well as other constitutional bodies and the armed forces during a state of emergency; the impact of subversive and drug-trafficking activities; and th Government's efforts to comply with the provisions of the Covenant and to promote public awareness of human rights instruments. Members also wished to be advised of the follow-up action taken as a result of the views adopted by the Committee with regard to Peru in communications Nos, 202/1986 and 203/1986.

303. In addition, members wished to know which practical measures had been implemented to ensure the effective enjoyment of human rights, in particular during a state of emergency; how the declaration of localized or short-term states of emergency could be reconciled with the Covenant; why article 2 (2) of the Peruvian Constitution, guaranteeing equality without discrimination, did not include all the categories listed in article *2* of the Covenant; what were the "expeditious actions" that had been taken to suppress terrorism; whether the reported 5,000 disappearances could be attributed to the"excesses" of a few members of the military; what were the lowest courts before which actions of habeas corpus or amparo could be brought; what the proposed preventive action of habeas corpus would consist of; how the reported massacre by the armed forces in Callara could be justified by the so-called principle of collective responsibility; and how the independence of the judicial system could be guaranteed, in practice, by the Public Prosecutor's Office. Members wished to know further whether the National Council for Human Rights was also responsible for preparing reports for submission to international organizations; whether the texts of treaties relating to human rights, which had constitutional priority, were reflected in Peruvian legislation; whether individuals could directly invoke the provisions of the Covenant; whether the Government had inquired into alleged cases of intimidation from both terrorist groups and government agencies; whether those responsible for excesses had been found guilty and punished; what measures had been taken to overcome the problems referred to in the report of the Working Group on Enforced or rnvoluntary Disappearances (E/CH.4/1991/20); whether a private citizen could institute proceedings to declare a law unconstitutional; and what difficulties had been encountered by the judiciary when trying offences committed by the armed forces.

304. In his response to the questions raised by members of the Committee, the representative of the State party said that the Peruvian Constitution contained specific provisions that reflected the Covenant, and the Government had also been amending national legislation to conform with the Covenant. Article 101 of the Constitution stipulated that international treaties formed part of Peruvian law and prevailed over conflicting national provisions. The Court of Constitutional Guarantees, having the competence to declare the unconstitutionally of laws and decrees, was the highest body qualified to deal with habeas corpus and amparo.

305. In connection with the questions relating to states of emergency, the representative explained that the rights to personal freedom, the security and inviolability of the home and freedom of assembly and of movement within the national territory could only be suspended but not derogated from upon the declaration of a state of emergency. The remedies of habeas corpus and as well as the remedy of ppreventive habeas corpus, remained available to persons who believed that their rights would be restricted. The situation would be improved by a new bill designed to overcome shortcomings in national legislation and to ensure full enjoyment of the right to habeas corpus.

306. Concerning other questions raised by members of the Committee, the representative said that it was the Government's policy to take measures to punish groups engaged in terrorism or drug trafficking. In a Memorandum of Understanding signed in 1991 between Peru and the United States of America to combat illicit drug trafficking, specific provisions were included to ensure that human rights would be respected when carrying out the anti-drug strategy. Teaching the provisions of the Covenant and other international human rights instruments had been made obligatory in educational institutions, both military and civilian, at all levels. The authorities in Peru had been making efforts to defend human rights and were considering ways to follow up on United Nations documents and to improve observance of the provisions of the

Covenant.

307. The representative of the State party stressed that one of the main obstacles to the full implementation of the rule of law and of human rights in Peru was the continued activities of terrorist groups, such as the Shinin Path, which could not be described as insurgents because they sought to establish totalitarianism and anti-democratic regimes and showed no respect for human rights. The Peruvian Government did not have a policy to deal with systematic violations of human rights. While mistakes could be and had been made, respect for human life was the cornerstone of Peru's democratic system and developing economy. With regard to the excesses committed by the armed forces and national police during the states of emergency from August 1989 to July 1991, 37 members of the army had been punished and 2 cases involving members of the navy were being investigated. Difficulties encountered in implementing rights under the Covenant also included logistic and procedural problems, such as the lack of infrastructure and difficulties stemming from the low salaries of the judicial officers. It was sometimes necessary to establish military-political commands to restore order in areas where the civilian authorities had either been assassinated or threatened by terrorist groups. However, the Government and the President had overall responsibility for maintaining law and order. A new law empowering the armed forces to take control of internal order and establish military-political commands in emergency zones gave the political authorities full rights in such zones and reaffirmed the authority of regional governments as part of an anti-terrorist strategy designed to strengthen the State's authority. Prosecutors were authorized to visit police stations, military installations and other detention centres to monitor the situation of detainees and investigate alleged disappearances. A state of siege applied to the entire country and could be put into effect in the event of, or the imminence of, invasion, foreign war or civil war.

306. The authority to legislate could be delegated to the executive undermarticle 188 of the Constitution. The President was required to report tomCongress on legislative decrees issued in exercise of such delegated powers. The National Council of the Magistracy was responsible for proposing to the President the appointment of judges and the Supreme Court investigated the functioning of the judiciary. Disappearances had fallen from 231 in 1990 to 117 in 1991. Cases of alleged torture had also fallen from 22 in 1990 to 7 in 1991. On the other hand, the number of disappearances where the Government of Peru had cooperated by providing specific answers had increased. The constitutionality of a law could be challenged by the President, 60 deputies or 20 senators, or by a petition of 50,000 citizens. Right to life: recognition as a person before the law?

liberty and security of the person; prohibition of slavery and servitude; treatment of prisoners and other detainees

309. In connection with those issues, members wished to know what measures had been taken to investigate, and to prevent the occurrence of, disappearances, extrajudicial executions or torture; what the rules were governing the use and abuse of firearms by the police and security forces; the rate of infant mortality as well as the legality of abortion; whether confessions obtained under torture could be used in court proceedings; what kind of restrictions could be placed on an individual's liberty; how quickly a person's family was informed of his arrest; what the policy was on decriminalizing prison inmates; what arrangements had been made for supervising detention centres; and what the procedures were for submitting and investigating complaints. Members also inquired whether arrested persons were actually brought to court within 24 hours, or as soon as distance permitted, during operations conducted to combat terrorism and insurgency; whether detainees were segregated from convicted prisoners; and whether offenders under 18 were separated from adult offenders.

310. Members were also concerned about the exemption from criminal responsibility, pursuant to article 2 of the Peruvian Penal Code, for abuse of power and unnecessary use of violence by a person acting under orders. Noting that similar provisions in other States parties had been found to be in violation of the Covenant/ members wondered how and in how many instances that exemption had been granted. Members also wished to know about the impact of the presidential decree of 1990/ which restricted the options to challenges to acts performed in an official capacity/ as well as about presidential immunity from prosecution. More information was also requested on the new Penal Code/ which did not seem to be applicable to the armed forces and police; enforced conscription; prison conditions; the guarantees and protection given to prosecutors during the performance of their functions; and the impact on rights guaranteed under article 14 of the Covenant applying the concept of collective responsibility in the emergency zones. Given that some 75 per cent of the prison population in Peru consisted of people who had not yet been tried, among whom there were several hundred female prisoners with over 100 dependent children, members asked whether it was the view of the Government that there was no need in practice to take account of the provisions of article 9 of the Covenant.

311. In reply to the questions raised by members/ the representative of the State party said that disappearances, extrajudicial executions and torture, or any other form of physical violence, were offences under Peruvian law. The Government was aware of the need to give priority attention to children and the adoption of relevant policies and decrees had been accelerated. The rights of the unborn child were protected by article *2* of the Constitution and abortion was punishable under the Penal Code, except when carried out on the recommendation of a panel of doctors. Infant mortality had dropped substantially with the aid *of* the United Nations Children's Fund (UNICEF). Statements obtained through the use of violence were not admissible and the law on habeas corpus and amparo contained provisions to ensure that illtreatment was not used to extract confessions. Ho one could be arrested without a written court order from a judge, or from the police in cases of flaaraitte delicto, and those arrested had to be informed immediately and in writing of the reasons for their detention. Such persons had the right to communicate with and be advised by an attorney of their choice from the time they were charged or arrested. Ho one could be held incommunicado except where the investigation of a crime made it indispensable. In all cases, the arrested persons -would be brought before court within 24 hours or within the time needed to arrive at the court. An aggrieved detainee could invoke the remedies of habeas corpus and amparo.

312. In connection with a directive which, according to Amnesty International, "purported to permit troops to carry out killings without a trace", the representative stressed that the directive was not government policy and not part of the legislative corpus of Peru. With regard to enforced recruitment, the representative attributed guilt to the terrorist group, the Shining Path, which frequently obliged minors to join its ranks. However, there was considerable interest in forming urban patrols for protection on a block-byblock basis. Military service was governed by the Compulsory Military Service Act, which provided for military training for all eligible men and women. The Government was concerned about disappearances and was conducting investigations through prosecutors and Bed Cross officials. A special Senate Commission on violence and pacification had been established and was drafting amendments to the law governing the state of emergency. Efforts were also being made to remecty shortcomings in prisons and to improve basic facilities such as meals. All children above three years of age hact recently been removed from prison institutions.

Right to a fair trial and right to privacy

313. With regard to that issue, members of the Committee wished to receive information on guarantees for the independence and impartiality of the judiciary and measures adopted to prevent intimidation of the members of the judiciary; legal and administrative provisions governing tenure and discipline of members of the judiciary; and the organization and functioning of the Bar in Peru and the availability of defence counsel in criminal cases. Members also wished to know whether there were any special courts and, if so, what their jurisdiction and review or appeal procedures were; who could appoint or dismiss judges and under what conditions; how jurisdiction was divided between military and civilian courts in cases where military personnel were allegedly involved in disappearances and torture; how the requirement to provide legal representation could be met in practice given the shortage of lawyers in the country; and whether lawyers were subject to territorial restrictions.

314. In addition, members wished to know whether the principle of exclusivity and unity of the jurisdictional function had been suspended or derogated from during the state of emergency; whether the provision in the Constitution whereby 2 per cent of the annual budget should be set aside for the judicial branch had been adhered to; and whether the administration of justice had been abrogated during states of emergency.

315. In his response, the representative of the State party said that the independence and impartiality of judges was guaranteed under the Constitution. A general office was established by law for the monitoring of the judiciary and a range of sanctions and disciplinary measures was also provided for. Judges were appointed by the President on the advice of the National Judges' Council. Lay judges were called upon to deal with minor cases and misdemeanours only. There was a free legal advice scheme in Peru and any detained person had the right to be advised by and talk with a lawyer of his choice. There were about 18,500 lawyers in Lima and lawyers were all members of the Peruvian Federation of Bar Associations. Jurisdiction was based on the fact that each department of Peru was a separate judicial district. All courts in Peru formed part of the judiciary system or the system of military justice. Civilians were subject only to civilian jurisdiction. In cases of jurisdictional conflicts between civilian and military tribunals, it was the function of the Supreme Court to settle the matter. The remedies of habeas corpus and amparo could be brought before any judge, who was obliged to consider them. Appeals against judgements by a military court were possible, failing which the accused could make use of a complaint procedure. As of 1991, the budget for the judicial branch had been increased to 2 per cent of the central Government's budget as required by the Constitution. Only the rights guaranteed under article 31 of the Constitution had been derogated from and guarantees relating to the administration of justice had not been affected by the states of emergency. Freedom of movement and expulsion of aliens; right to privacy; freedom of religion, expression, assembly and association; and right to participate in the conduct of public affairs

316. With reference to those issues, members of the Committee wished to receive information concerning grounds for the expulsion of aliens; procedures for the legal recognition and authorization of various religious denominations and as to whether the Roman Catholic Church enjoyed privileged treatment; limitations on freedom of the mass media; and restrictions on the right to vote imposed on the armed forces and the police. In the latter case, they wished to know, in particular, what the Government was doing to ensure that denial of voting rights did not alienate the armed forces and the police from civil society. They also requested clarification of the statement in the report that "in most cases, shutdowns, strikes or similar work stoppages have been settled through ordinary legal procedures" and of the provisions of the recent presidential decree authorizing certain powers of censorship in the interest of national security and permitting the armed forces access to the universities.

317. In addition, members wished to know whether there were displaced persons in areas close to military activities and how the population in such areas was protected; what type of acts were deemed by the Aliens' Act to contravene the law, morals, decency and security of the State; and whether the prohibition against expressing an opinion critical of the State would restrict the constitutionally protected freedom of expression and whether that prohibition extended also to those in power; what the functions were of the State Intelligence Bureau; how the emergency powers relating to the abrogation of existing collective agreements and the suspension of collective bargaining processes had been applied and whether any compensation was paid to those who had been affected by such abrogation of rights; how the detention under the anti-terrorism law of two newspaper editors could be reconciled with respect for freedom of expression.

318. As regards the right to privacy, members noted that existing provisions in Peru seemed to contain no express prohibition against the use of electronic devices for interfering with communications and asked what the Government's response had been to the reported telephone taps placed on union leaders, candidates for office and reporters. Members also wished to know whether there had been any derogations from the inviolability of communications during states of emergency.

319. In response, the representative of the State party said that the Constitution established t&e right of any citizen to freedom of movement, except where such movement was prohibited for reasons of public health. Ho person could be expelled except by special mandate or by application of the Aliens' Act. The expulsion of aliens was justified only in exceptional cases. There were no procedures for the recognition and authorization of different religious denominations and no preferential treatment was accorded to the Roman Catholic Church. The equality enjoyed by different religious denominations was reflected in the composition of the Peace Council, whose members represented a wide range of religious beliefs and denominations. The

Constitution also guaranteed freedom of information, opinion and expression and the diffusion of ideas without prior authorization or censorship or other impediment. Newspapers, radio and television were entirely free to express opinions highly critical of the Government. Any limitation on freedom of expression was considered a crime. The right to strike had likewise been established in the Constitution. Members of the armed forces and police on active duty could not vote or stand for election, but upon their retirement they regained their right to do so. No newspaper editors were being held under the anti-terrorism law, but some unofficial leaders of the Shining Path were being detained for the offence of advocacy of terrorism. The national intelligence system, which had been implicated in money laundering, had been abolished by the Congress. Communications continued to be inviolable even during states of emergency and wire-tapping had been stopped.

Non-discrimination, equality of the sexes before the law and protection o£ family and children

320. In relation to those issues, members wished to know how effective the measures designed to promote full equality of the sexes had been; how the treatment of aliens differed from that of citizens; what the law and practice were concerning the employment of minors; and whether men and women working under the same conditions received the same salaries; and what the percentage was of women serving in government departments, the legislature and the judiciary. Members also requested information concerning child prostitution and trafficking in women and children; the reported employment of 1 million children under the age of 14 in the country, child slavery in the Madre de Dios gold mines, and how the Government viewed such reports; and Peru's environmental protection policy.

321. Responding to the questions that had been raised, the representative noted that the Constitution did not allow for any discrimination on the basis of sex. The relevant statistics showed that government policies had had a positive impact on political participation by women, who had also made great strides in economic and social status. The Constitution provided for just remuneration under the same conditions for men and women, without distinction. There was currently one minister and some 15 to 20 women in the Chamber of Deputies and the Senate, Aliens could buy property only in border provinces. In general, there were some limits on the political rights of aliens when national security was threatened. Children in employment were protected by law and minimum age limits had been set for children employed in various industries. The Government was aware, however, that the economic and social conditions had forced many youths to work under illegal conditions and an ad hoc commission was currently reviewing the relevant legislation. Several voluntary programmes, which were partly subsidized by the Government, had recently begua to provide street children with food and shelter. Although child labour had once existed in the Madre de Dios gold mines, it had never amounted to slavery and had been abolished. The Government had also undertaken an ambitious project to establish a foundation for the welfare o£ all children in Peru. A chapter on crimes perpetrated against the environment and public health had been included in the new Penal Code. Rights of persons belonging to minorities

322. With reference to that issue, members requested additional information concerning legislation to give effect to articles 34, 35 and 169 of the Constitution, as well as the relevant practices. They also wished to know what factors and difficulties had been encountered in implementing article 27 of the Covenant, including the situation of indigenous people in areas where production of and trade in drugs caused problems; what measures had *been* taken to ensure effective participation by minority groups in the political process; whether there was any minority representation in Congress; and what assistance had been given by the Government to the indigenous peoples who were caught between the Shining Path's interest in drug production and the repressive activities carried out by the army and police.

323. In response to those questions, the representative of the State party said that the Constitution recognized the legal existence and capacity of the peasant and indigenous communities, who were autonomous in their administrative organization, community work and use of land, and that their land ownership, traditions and practices were respected by the Government. However, owing to the serious impact of terrorism and drug trafficking in those communities, government policies that aimed at ensuring minority participation had fallen short of expectations and additional activities were being undertaken. One of the objectives of the government strategy to combat drug trafficking was to enable indigenous communities in coca-growing regions to enter into negotiations with businesses interested in investing in other crops. Peasant communities could also organize politically. 324. In compliance with the decision adopted by the Committee at its 1148th meeting, the State party submitted a supplementary report dealing with events occurring subsequent to the consideration of the second periodic report at the Committee's forty-fourth session, in particular in respect of the application of articles 4, 6, 7, 9, 19 and 25 of the Covenant.

325. Referring to the events that had taken place on 5 April 1992 and the ensuing state of emergency, members wished to know which of the rights protected under the Covenant were being suspended; how the independence of the judiciary was being ensured when all new judges were appointed by the President; what had been the benefit, if any, of the dissolution of Congress and the removal of judges; what measures were being taken to control the military and security forces; whether allegations of the crimes of violence, enforced disappearance and summary execution were investigated and the perpetrators punished; and whether habeas corpus was still in effect. Members also questioned the constitutionality of the steps taken by the President of Peru on 5 April 1992, which some saw as a coup d'etat, and wished to know whether the Constitution was still in force; what the constitutional basis was for the reconstruction measures being taken; whether the relevant details regarding the state of emergency had been communicated to the Secretary- General; and what measures had been taken to alleviate hardships and to ensure implementation of the Covenant during the state of emergency. 326. In addition, members wished to know the basis for the conclusion, by the Government of Emergency and National Reconstruction, that a very high percentage of Peruvians had supported the measures taken on 5 April 1992. Further information was also sought on the disaster that had taken place in the Castro Castro Prison; the activities of paramilitary groups, rondas campesinas and peasant patrols; the house arrest of politicians after 5 April 1992; the register of detainees; violations of human rights by members of the military forces and whether any training had been provided to them on human rights; the jurisdiction and duties of the courts dealing with offences committed by juveniles; the position of former President Alan Garcia and whether he would be allowed to return to Peru and to participate in the elections; restrictions on a citizen's right to participate in the political life of the State; the number of political prisoners; details of Decree-Law No. 25592 and the criteria for the selection of personnel for the newly formed Human Rights Council in Peru. Members also reiterated concerns that had been voiced earlier relating to such matters as the right to life, the role of the military courts, the need to combat terrorism other than by State terrorism, and, more generally, the overall impact of the state of emergency on the implementation of the provisions of the Covenant.

327, In reply, the representative of the State party reassured the Committee that the Peruvian Government was committed to institutional normalization. She told members that the state of emergency, enforced in accordance with article 231 of the Constitution of Peru, was temporary and exceptional and had led to no derogation whatsoever from articles 6, 7, 8 (1) and (2), 11, 15, 16 and 18 of the Covenant. Under article 231, the armed forces assumed control of internal order in the emergency zones. While the judiciary had been briefly suspended owing to its reorganization, it was functioning normally at all levels. The Attorney General's office had been more active in protecting human rights. Measures to reduce tension were under way, including a fund for compensation and development; education and training; a national food programme, and a five-year plan of action for children. Concerning enforced disappearances, the representative said that officials found guilty of such acts would be punished in accordance with the law. A nationwide network of registers of detainees was being set up to facilitate the dissemination of information to prosecutors as well as to human rights bodies. There was a separate register for complaints concerning disappearances. Excesses had been committed in implementing the anti-terrorist strategy but there was no permanent impunity for those who had perpetrated them. Members of the security forces, including the armed forces and the police, who had committed illegal acts were prosecuted and tried in military courts. Under the provisions of Decree-Law No. 25992, adopted on 26 June 1992, they could be sentenced to prison terms of up to 15 years. There were currently no political prisoners in Peru, Freedom of expression was fully respected and exercised. Habeas corpus had always been in force despite the suspension of the judiciary. There had been no recent increase in the number of declared disappearances.

328. The Constitution of Peru was still in force, although some of its provisions had been temporarily suspended. These, however, did not include any of the articles of the Covenant to which the supplementary report referred, namely articles 4, 6, 7, 9, 19 and 25. The incident at Castro Castro Prison had been sparked off by the transfer of women terrorists tonanother jail and had led to the deaths of some 40 persons, but it had not been the Government's policy to initiate violence. The rondas campesinas and peasant patrols were not armed by the military but were under government supervision. The former President of Peru, Mr. Garcia, had gone into voluntary exile but could eventually return to Peru. He would be able to participate on the same basis as any other citizen - or indeed, political party, representative institution or organization - in the dialogue leading up to the elections for the new Democratic Constituent Congress. A high-level Commission was currently evaluating various proposals for improving the Constitution. Once the new Congress had been elected, it would be empowered to investigate the actions taken by the Government since 5 April 1992.

329, In response to other questions, the representative said that laws had been passed to provide training on human rights for the police and armed forces. The house arrest of politicians was a security measure to prevent the Shining Path or "Tupac Amaru" from taking advantage of the situation to incite uncontrollable commotions and disturbances. Offenders aged under 18 years were not sent to prison but to special institutions where they received guidance rather than punishment. There was, however, no juvenile court in Peru.

Concluding observations by individual members

330. Members of the Committee expressed appreciation of the State party's cooperation in submitting additional information and in complying with the Committee's requests for a supplementary report occasioned by the events that had taken place in Peru on 5 April 1992. While the representatives of the State party had made a commendable effort to respond to their queries, members regretted that their concerns had not been adequately addressed in the additional information that the Government had submitted, which left most of their questions unanswered. Members were not satisfied that their request for a supplementary report made at the Committee's forty-fourth session had been met adequately. As a result, members found it difficult to form a comprehensive view of the human rights situation in Peru during the period under review and, in particular, since 5 April 1992.

331. Members found little information in the report itself relating to the period prior to 5 April 1992 that was positive. Subsequent developments in respect of the implementation of the rights and freedoms protected under the Covenant had, under the Government of Emergency and Rational Reconstruction, also not been encouraging. In particular, members were deeply concerned about terrorism, which appeared to be part of the daily life in Peru and was an obstacle to the application of the Covenant. Members condemned not only the activities of terrorist groups but also the excessive force and violence used by the military, the security forces and paramilitary and civilian groups. Members considered that combating terrorism with arbitrary and excessive force could not be justified under any circumstances.

332. Another principal concern of members of the Committee related'to the constitutional justification of the changes in Peru brought about by the events of 5 April 1992. It appeared that the ensuing suppression of the Constitution and dissolution of Congress had rendered the state of law uncertain, left the legal system and judiciary in disarray and resulted in the de facto suspension of habeas corpus. The Committee had reason to believe that, subsequent to 5 April 1992, many of the rights contained in the Covenant, including non-derogable rights specified under article 4, paragraph 2, had been derogated from,

333. Members also expressed concern about the house arrest of politicians and did not find the reasons for such detentions convincing. Women who had not been found guilty of an offence had been detained, together with their children. Those detentions could not be considered compatible with the rights guaranteed under the Covenant. Members expressed regret that no response had been received regarding follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely, communications Nos. 202 (1986) and 203 (1986), despite the request by its Special Rapporteur and repeated queries raised during the dialogue. Noting the intention of the Government of Peru to restore democracy and law and order, members of the Committee considered that, even during the current transitional period, the Government had to pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that the emergency circumstances warranted any derogations from such rights, they were to be strictly confined to the limitations specified under article 4 of the Covenant, and other States parties should be duly notified.

334. The representative of the State party assured the members of the Committee that their views and concerns would be communicated to her Government but emphasized that Peru clearly had difficulties in complying with its obligations under the Covenant.

335. In concluding the consideration of the second periodic report and the additional information and supplementary report submitted by Peru/ the Chairman joined the members of the Committee in thanking the delegation of the State party for its cooperation. Hoting that he shared most of the observations and views expressed by the members, he stressed that the Committee's intentions were to assist the Government of Peru in applying the Covenant. He expressed the hope that the transitional period in Peru, during which the Government envisaged bringing about changes and reconstruction, would be brief. He hoped that the next periodic report, due in April 1993, would reflect the full implementation of the rights and freedoms under the Covenant.

Comments of the Committee

336. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

337. In accordance with that decision, at its 1175th meeting, held on 30 July 1992, the Committee adopted the following comments.

Introduction

338. The Committee expresses its appreciation of the Government of Peru's cooperation in continuing the dialogue during the consideration of the State party's second periodic report, and especially for providing the additional information on the report as offered by the delegation and for complying with the Committee's requests for a supplementary report relating to the situation in Peru after 5 April 1992. While the representatives of the State party have made a commendable effort to answer the numerous queries raised by members, the Committee regrets that its concerns have not been adequately addressed and that most of the questions were not answered satisfactorily, both in the oral presentations and in the addendum to the report. It notes with disappointment that the delegation's offer, made at the Committee's forty-fourth session, for some of the answers to be given in writing had not been acted upon. It also regrets that the State party did not provide information on problems relating to the Covenant's application as a consequence of the events of 5 April 1992, as was requested by the Committee. As a result, the Committee has found it difficult to form a comprehensive view of the human rights situation in Peru during the interval under review and, in particular, the period after 5 April 1992.

1. Positive aspects

339. The Committee welcomes the enactment, both before and after 5 April 1992, of legislation concerning procedures for registering complaints about extrajudicial detention and torture and allowing prosecutors to visit and monitor detention centres. The Committee also welcomes the legislative expression of culpability for all persons, including State officers, who engage in terrorism and in arbitrary and excessive use of force or who are responsible for disappearances. The Committee also regards as an important feature the creation of a new register of detainees and the envisaged change in the composition of the National Council for Human Eights, in order that members of different government agencies whose activities affect the realm of human rights be represented therein. The Committee notes also the recent strong statements addressed to the army and police by the President of Peru concerning the importance of human rights.

2. Factors and difficulties impeding the application of the Covenant

340. The Committee finds little information in the report itself that relates to the period before 5 April 1992 and notes the Peruvian Government's view that much of the system existing before that date suffered from serious and profound flaws and needed reconstruction. Developments after 5 April 1992, when the Executive Branch seized all powers of the Peruvian State and constituted the Government of Emergency and National Reconstruction, have also not been encouraging. The Committee considers that the internal disorder and lawlessness in Peru, both before and after 5 April1992, have obstructed the Covenant's effectiveness and, in some cases, rendered it inapplicable.

341. In this connection, the Committee observes that, during the entire period under examination, the assumption of power by military forces in the areas declared to be under a state of emergency has rendered ineffective the implementation of certain rights and freedoms guaranteed under the Covenant. The Government's acceptance of civilian vigilante groups that have full army support, notably the peasants' patrols *(*rondas campesinas) has worsened the situation, and it is clear that the Government is not in a position to rectify various abuses, including excessive and indiscriminate retaliatory responses to terrorist acts.

342. It remains to be seen if the changes brought about by the Government of Emergency and National Reconstruction will assist in the restoration of internal law and order in Peru, At the present time there is no evidence that this is the case. The concentration of all power in the hands of the Executive, the unilateral changes by the Government of Emergency and National Reconstruction in the Judiciary, and the serious disruptions to the legal system have, in the Committee's opinion, impeded the application of the Covenant in Peru.

3. Principal subjects of concern

343. The Committee expresses its deep concern about the terrorism that appears to be part of daily life in Peru. The Committee condemns the atrocities perpetrated by insurgent groups and is particularly disturbed *by* the scale of terrorist violence, which shows no consideration for the most basic human rights. Nevertheless, the Committee also censures excessive force and violence used by the military, the paramilitary, the police and armed civilian groups. It is troubled by the great number of complaints of extrajudicial executions and disappearances attributed to the security forces. In this respect, the Committee is deeply concerned about the absence of civilian control over the military and paramilitary groups, especially in the zones under their control, which in some cases amounts to impunity. In particular, the Committee regrets that those groups can be tried for acts of violence only under military law. The Committee considers that combating terrorism with arbitrary and excessive State violence cannot be justified under any circumstances.

344. The Committee also expresses concern about the circumstances relating to the events of 5 April 1992. The terms of Decree-Law No. 25418, which transformed the Executive into a Government of Emergency and National Reconstruction and dissolved other constitutional powers, has effectively suspended important parts of the Constitution and rendered the state of law uncertain; it has left the legal system and the judiciary in disarray; it has also resulted in the de facto suspension of habeas corpus and amp\_aro\_ and in the retroactive application of new legislation, especially that drawn up for specific cases.

345. The Committee has serious concerns about the application of the state of emergency in Peru. No formal notice of derogation relating to this period has been received by the Secretary-General. Procedural requirements have not been complied with. Although the Peruvian delegation told the Committee that no non-derogable right under article 4 had been derogated from, the Committee was not informed which articles of either the Covenant or the Constitution were regarded as suspended.

346. The temporary detention on 5 April 1992 of opposition leaders, mainly politicians, labour leaders and journalists, is also a cause for concern and the Committee floes not find the reasons for such attentions convincing. Korcan the unavailability of certain rights to those and other persons, resulting from the events of 5 April 1992, be legally justified.

347. The Committee also observes with concern that many people, including women and children, are held for prolonged periods before trial in police cells. That is not compatible with the rights guaranteed under article 9 of the Covenant.

348. A further matter of concern related to follow-up action taken pursuant to the views adopted by the Committee under the Optional Protocol with regard to Peru, namely communications Nos. 202 (1986) and 203 (1986). The Committee regrets that no response has been received, despite the request by its Rapporteur on Follow-up and repeated queries raised during the dialogue.

4. Suggestions and recommendations

349. The Committee notes the intention of the Government of Peru to restore democracy and the rule of law. However, it considers that, especially during the current period in which the totality of the State's powers lies in the Executive, the Government must pay due attention to the implementation of the rights and freedoms guaranteed under the Covenant. In the event that emergency circumstances warrant derogation from such rights, they should be strictly confined to the limitations specified under article 4, and other States parties and the Committee should be duly notified of the facts and details of such derogations. The Committee hopes that the democratic system will be re-established as soon as possible. As elections for a Constituent Assembly have been scheduled for 22 November 1992, the Committee looks forward to seeing full implementation of the rights and freedoms under the Covenant in the near future.

1. Report of the Human Rights Committee to UN General Assembly, 1994, UN Doc. A/47/40. [↑](#footnote-ref-1)