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Civil and Political Rights**

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**Consideration of reports submitted by States
parties under article 40 of the Covenant**

Fifth periodic report

Peru*, **

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** Annexes can be consulted in the files of the Secretariat.

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Abbreviations

International and national instruments

AN	National Accord
CADH	American Convention on Human Rights

International organizations

ICRC	International Committee of the Red Cross
IACHR	Inter-American Commission on Human Rights
IMO	International Organization for Migration
ILO	International Labour Organization

State entities

ALEGRA	Free legal aid
AMAG	Judicial Training School
APCI	Peruvian International Cooperation Agency
CAR	Residential care home
CC	Constitutional Court
CEM	Emergency women's centre
CENECP	National Centre for Criminological and Prison Studies
CIAM	Integrated care centres for older persons
CMAN	High-level multisectoral commission
CNDH	National Human Rights Council
CNM	National Council of the Judiciary
CPETI	National Steering Committee for the Prevention and Eradication of Child Labour
CR	Reparations Council
CVR	Truth and Reconciliation Commission
DGFC	Directorate of the Family and the Community
DIGEMIN	Immigration and Naturalization Department of the Ministry of the Interior
DIRTEPOL	Territorial Department of Police
DIVINTRAP	Criminal Investigation Division against People Trafficking
DP	Ombudsman's Office
EP	Peruvian Army
FAP	Peruvian Armed Forces

FONCODES	National Development Cooperation Fund
IML	Forensic Institute
INEI	National Institute of Statistics and Data Processing
INPE	National Prison Institute
JNE	National Board of Elections
MEF	Ministry of Economy and Finance
MGP	Peruvian Navy
MIMDES	Ministry of Women and Social Development
MINAM	Ministry of the Environment
MINCETUR	Ministry of Foreign Trade and Tourism
MINDEF	Ministry of Defence
MINEDU	Ministry of Education
MINEM	Ministry of Energy and Mines
MININTER	Ministry of the Interior
MINJUS	Ministry of Justice
MINSA	Ministry of Health
MP	Public Prosecutor's Office
MRE	Ministry of Foreign Affairs
MTC	Ministry of Transport and Communications
MTPE	Ministry of Labour and Employment Promotion
NGO	Non-governmental organization
PJ	Judiciary
PNP	Peruvian National Police
RENIEC	National Identification and Civil Status Registry
RETA	Registration and Statistical System on the Crime of Trafficking in Persons and Related Crimes
RUV	Single Register of Victims
SIS	Comprehensive health insurance

Programmes and plans

INABIF	Comprehensive Family Welfare Programme
PIO	National Equal Opportunity Plan
PIR	Comprehensive Reparations Programme
PNAIA	National Plan of Action for Children and Adolescents 2002–2010
PNAF	National Plan to Support the Family 2004–2011
PNCVFS	National Programme to Combat Violence against Women

PNCVHM	National Plan to Combat Violence against Women
PNDH	National Human Rights Plan
PNPETI	National Plan for the Prevention and Eradication of Child Labour

Legislation

CC	Civil Code
CdPP	1940 Code of Criminal Procedure
CEP	Code of Criminal Enforcement
CAN	Children and Adolescents Code
CP	Criminal Code
CPC	Code of Constitutional Procedure
CPP	1991 Code of Criminal Procedure
LCJ	Judicial Career Act
LIO	Equal Opportunity Act
LFF	Act on the strengthening of the family
LOPJ	Act organizing the judiciary
NCPP	New Code of Criminal Procedure

Other abbreviations

AA	Action of <i>amparo</i>
D.Leg.	Legislative decree
DNI	National identity document
D.S.	Supreme decree
ENDES	Population and Family Health Survey
ESNS	National Sexual and Reproductive Health Strategy
STDs	Sexually transmitted diseases
EVAM	Older persons
HC	Habeas corpus
NNA	Children and adolescents
MDG	Millennium Development Goal
TB	Tuberculosis
TDP	Trafficking in persons
TP	Preliminary title

I. Introduction

1. In ratifying the International Covenant on Civil and Political Rights, the Peruvian State also assumed the international commitment to submit periodic reports to the United Nations Human Rights Committee pursuant to article 40 of the Covenant. Accordingly, conscious of its responsibility and respectful of its international human rights commitments, it is pleased to introduce its fifth periodic report.

2. This document reflects the Peruvian State's ongoing commitment to respect, protect and implement the rights and obligations established in the Covenant. This is demonstrated by the legislative, administrative and other measures taken since its previous periodic report to the Human Rights Committee to bring its laws and public policies into line with the provisions of the Covenant, wherever possible.

3. The National Human Rights Council (CNDH), the body responsible for drawing up public policy in the area of human rights, is also responsible for drafting and consolidating periodic reports in coordination with the relevant public institutions. Thus, after analysing the status of submission of pending periodic reports, it concluded that there was a need to draft and submit the consolidated fifth periodic report on the implementation of the Covenant. To this end, a workshop on "The International Covenant on Civil and Political Rights, General Comments and Guidelines for the Drafting of Peru's Periodic Report" was organized jointly with the South America Regional Office of the Office of the United Nations High Commissioner for Human Rights (OHCHR) on 23 and 24 September 2010. A total of 32 officials from various sectors were trained so that they could work together and in coordination on the present report.

4. As a result, the present document was drafted by a working group made up of officials of CNDH and of the Human Rights Department of the Ministry of Foreign Affairs. Inputs included the documentation and information received by officials trained at the workshop, who acted as liaisons for their respective sectors in the transmission of information to the working group and later jointly approved the information contained in the present report. Thus, the information provided under each article is that transmitted by each official to the working group.

5. Once work was complete, the report was circulated to CNDH members¹ and observers, including the Office of the Ombudsman and representatives of civil society, such as the Peruvian Episcopal Commission, the Evangelical Council of Peru and the National Human Rights Coalition, for comments. Lastly, the periodic report in its present form was adopted at the Commission's third regular meeting, held on 25 April 2011.

6. The present periodic report contains information covering the period from the submission of the previous periodic report to the Human Rights Committee up to April 2011. It is drafted by article and the information given under each article corresponds, where appropriate, to the observations and recommendations made concerning the previous periodic report.

7. The paragraphs on articles 1 to 27 are precise and specific. In some cases, statistics are provided on the most important advances and achievements, as well as on the major

¹ CNDH is made up of representatives of the Office of the President of the Council of Ministers and of the Ministries of Justice, Foreign Affairs, Defence, Interior, Education, Health, Labour and Employment Promotion, Women and Social Development, Environment, Energy and Mines, the judiciary and the Attorney General's Office.

challenges still facing the Peruvian State. There is also a list of the annexes attached to the report.

8. Accordingly, the Peruvian State is pleased to submit the consolidated fifth periodic report, describing the progress made and the challenges faced with respect to the articles of the Covenant. It wishes to point out that, as a State that respects human rights, it is doing its best to take all necessary action to implement the provisions of the Covenant.

II. Information on the articles of the International Covenant on Civil and Political Rights

Article 1

9. Self-determination means the political participation of peoples and this is an ongoing concern for the Peruvian State, reflected in the promotion of policies giving access to citizenship rights. As a result, 85.1 per cent of members of Amazonian native communities now have a national identity document (DNI)² enabling them to exercise their political rights: to take part in referendums, put forward legislative proposals, remove or recall authorities and demand accountability. They also have the right to stand for election and elect their representatives freely, according to the conditions and procedures laid down by law. Local residents have the right and the obligation to participate in the municipal government of their area, and the law regulates and promotes direct and indirect mechanisms for their participation. Nevertheless, the development of accessible, decentralized public policies reaching all communities so that they can exercise their rights fully is still an ongoing process.

10. Under Act No. 27683 on the preparation of lists for the election of candidates to regional and municipal councils, a minimum of 15 per cent of candidates on the list must be representatives of native communities and original peoples of each region in which they exist, as determined by the National Board of Elections (JNE). It is necessary to preserve organizations by ensuring that they do not become cut off from their leaders in order to meet this quota. It should be noted that the current legislature has a member of Congress who belongs to a peasant community.³

11. The State also recognizes and protects the rights of indigenous peoples to the lands that they traditionally occupy and use as a means of subsistence. In this connection, article 88 of the Political Constitution of Peru guarantees the right to private, communal or any other associative form of land ownership, while article 89 recognizes the autonomy of indigenous communities in their organization, communal work and use and free disposal of their lands. This confronts the Government with challenges such as assessing the integrity of the territory.

12. The Peruvian State recognizes and protects the nation's ethnic and cultural pluralism. Thus, article 149 of the Constitution accepts the exercise of judicial functions by the authorities of peasant and native communities, within their territorial jurisdiction and in keeping with customary law, provided that they do not violate the fundamental rights of the person. That they are allowed to regulate their daily lives in accordance with their ancestral

² Source: INEI-II Census of Indigenous Communities of the Peruvian Amazon, National Censuses 2007: XI Population and VI Housing.

³ Congresswoman Hilaria Supa Huamán belongs to the Huayacocha-Anta peasant community in Cuzco.

laws and procedures is also recognition of their power to regulate their lives and relations as a community.

13. The Peruvian State has likewise adopted various laws (see annex 1) designed to protect the right to live in a healthy environment and the obligation to promote the sustainable use of natural resources.

14. One outcome of the State's efforts and concerns with regard to the sharing and distribution of wealth is that hydrocarbons exploitation gives rise to economic resources benefiting the population and deriving from the *canon*, *sobre canon petrolero* and *canon gasífero*, which are levies on oil and gas profits. Through the oil levies, local governments (provincial and district municipalities) and regional governments receive a share of the total earned and unearned income obtained by the State from the economic exploitation of oil in their territories (see annex 2).

15. It is also important to mention that Supreme Decrees Nos. 042–2003-EM and 052–2011-EM establish the principles according to which owners of mining companies must establish a relationship with populations and communities living in the area surrounding their activities. These principles include dialogue and respect for communities' customs, institutions and way of life and also require the adoption of policies of social responsibility for local development (see annex 3).

16. Moreover, pursuant to Act No. 28736,⁴ the State guarantees the rights of indigenous peoples living in isolation or in an initial-contact situation and assumes a number of obligations with regard to land.⁵ Article 5 of the Act refers to the intangibility of indigenous reserves, which are lands delimited by the Peruvian State in favour of indigenous peoples living in isolation or an initial-contact situation, and stipulates that, as long as they remain in that situation, the State must protect their rights and habitat and the conditions that ensure their existence and integrity as peoples.⁶ In this connection, civil society's anxiety about the possible presence of mining concessions in reserve areas must be weighed and borne in mind. The land laws for other indigenous populations (not in voluntary isolation or initial contact) are regulated by the 1989 ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.⁷

17. With regard to the environment, Act No. 28611, the General Environment Act, establishes that any person or legal entity may, either individually or collectively, submit opinions or inputs to environmental management decision-making processes. It also proposes the social inclusion of indigenous populations in public participation mechanisms.

⁴ Act No. 28736: Act on the protection of indigenous or original peoples living in isolation or in an initial-contact situation.

⁵ *Ibid.* article 4: "(...) (c) Protect their culture and traditional ways of life, recognizing these peoples' special spiritual relationship with their habitat as an integral part of their identity; (d) Recognize their right to own the lands they occupy, restricting the entry of outsiders to them; populations' ownership of their land is guaranteed once they adopt a sedentary way of life; (e) Guarantee free access to and extensive use of their lands and natural resources for their traditional subsistence activities; and (f) Establish indigenous reserves, to be determined on the basis of the areas they occupy and to which they have traditionally had access, until such time as they decide voluntarily to obtain legal title to them".

⁶ The foregoing takes into account the obligations and principles established in articles 13 to 19 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, to which Peru is a party.

⁷ The Ombudsman's Office prepared and published a report on indigenous peoples' right to be consulted (report No. 001–2009 of the Environment, Public Services and Indigenous Peoples section), calling for this right to be respected and emphasizing the State's obligation to promote the necessary measures for its proper implementation.

To this end, in areas where there are issues subject to consultation and populations who mainly use languages other than Spanish, the competent authority must guarantee the means for them to participate in and understand the consultation process. Moreover, the rights of indigenous peoples and peasant and native communities must be safeguarded in the design and implementation of environmental policy and, in particular, the environmental and territorial planning process.

18. With regard to community-held knowledge, Act No. 27811 established rules for the protection of indigenous peoples' collective knowledge in relation to biological resources.

19. A draft framework law on prior consultation (No. 413–2006-CR), combining the eight existing bills on the subject, is also ready for evaluation by the plenary Congress.

20. Without prejudice to the foregoing, the Ministry of Energy and Mines, pursuant to an order of the Constitutional Court in its ruling in Case No. 5427–2009-PC/TC, prepared, in coordination with the International Labour Organization (ILO) and with its technical assistance, draft rules for the consultation of indigenous peoples on mining and energy activities. The rules were adopted by Supreme Decree No. 023–2011-EM, regulating the procedure for implementing indigenous peoples' right to be consulted on mining and energy activities (see annex 4).

21. On 12 January 2011, the Ministry published a guide to public participation in the mining subsector, designed to provide mine owners, authorities and civil society with a tool to help select, propose, evaluate and implement mechanisms for public participation. The Ministry of the Environment has likewise issued various rules on the participation of civil society, which obviously includes native communities, in the mining sector (see annex 5).

22. The Constitutional Court has also issued various rulings⁸ in which, pursuant to its constitutional mandate, it interpreted the right to prior consultation (see annex 6).

Article 2

23. According to article 1 of the Peruvian Constitution, protection of the individual and respect for his dignity are the highest goal of society and the State. The right to equality is constitutionally recognized and any kind of discrimination is prohibited. The rights recognized in the Covenant are ensured to all persons within the territory and jurisdiction of Peru. Article 2 (2) of the Constitution also establishes that special laws may be enacted for these persons if the situation so requires, but not because of differences among them. In Peru, the rights of foreigners and nationals are guaranteed without discrimination and special restrictions may be considered for foreigners only in the cases expressly indicated in the Constitution and special laws and in keeping with the Covenant and other international treaties to which Peru is a party. There is a legislative gap that must be filled in order to guarantee foreigners the right to appeal against the decisions of the immigration authorities, however, in that Legislative Decree No. 737, the Aliens Act, does not provide for this possibility.

24. In successive cases, the Constitutional Court has defined the essential content of the right to equality, understanding it as a right whose scope cuts across the entire legal system (Constitutional Court ruling in Case No. 261–2003-AA/TC).

25. Peru has a National Human Rights Plan (PNDH),⁹ which is the national policy document that identifies the measures needed in order for the promotion and protection of

⁸ Constitutional Court rulings, Cases Nos. 03343–2007-PA-TC of 19 February 2009, 022–2009-PI-TC of 9 June 2010 and 05427–2010-PC-TC of 30 June 2010.

human rights to be coordinated more efficiently among State entities. It also seeks to ensure that domestic law and practice are in keeping with the international human rights obligations assumed by Peru. The Plan has been extended to December 2011 (Supreme Decree No. 021–2010-JUS of 29 December 2010).

26. There is also a National Accord,¹⁰ a set of State policies drawn up and adopted on the basis of dialogue and consensus among the main representatives of political organizations and civil society. Its aim is to set a course for the country's sustainable development and for the strengthening of democracy through State policies that include policies for ensuring equal, non-discriminatory access to and the enjoyment of fundamental rights.

27. The executive branch has also established binding national policies for public institutions and officials (Supreme Decree No. 027–2007-PCM) designed to ensure, *inter alia*, the promotion of rights on an equal footing for men and women, young people, Andean and Amazonian peoples, Afro-Peruvians and Asian Peruvians and persons with disabilities.

28. With regard to the State's obligation to guarantee the rights established in the Covenant, those rights are recognized in the Peruvian Constitution. Article 3 of the Constitution guarantees the protection of rights not expressly established therein but of a similar nature or based on human dignity and recognized in treaties ratified by the State. This provision, which endorses at the highest legislative level the progressive development of human rights, includes any right established in the Covenant but not directly mentioned in national legislation.

29. Articles 55 and 56 of the Constitution establish that human rights treaties are incorporated automatically into domestic law once they have been approved by Congress and ratified by the President of the Republic. According to the fourth final and transitional provision of the Constitution, such treaties have constitutional rank. Article V of the preliminary title of the Code of Constitutional Procedure (CPC)¹¹ also indicates that rights protected by constitutional procedures must be interpreted in accordance with human rights treaties, as well as with the decisions adopted by international human rights courts to which Peru is a party. Any law forming part of the domestic legal system and, in general, any public activity must be in keeping with the Covenant and with all other human rights treaties ratified by Peru (Constitutional Court ruling in case No. 2797–2004-HC/TC). The Constitutional Court has noted that human rights treaties are a parameter of constitutionality in the area of rights and freedoms¹² and enjoy constitutional rank.¹³

30. With regard to consistency between domestic law and the Covenant, article 138 of the Constitution states that where judges identify a conflict between a constitutional norm and a lower-ranking norm, they must, in strict compliance with the system of broad oversight, give preference to the constitutional norm. Likewise, article VI of the Code of Constitutional Procedure guarantees that when a constitutional judge identifies a conflict between a constitutional norm and a lower-ranking norm, he will give preference to the former. As a result, since the Covenant has constitutional rank, in any conflict with a norm

⁹ The National Human Rights Plan 2006–2010 was adopted on 10 December 2005 by means of Supreme Decree No. 017–2005-JUS. It was drawn up by the National Human Rights Council (CNDH) on the basis of United Nations human rights guidelines. Available at www.minjus.gob.pe/cndh/index.asp, accessed on 12 February 2011.

¹⁰ Signed on 22 July 2002 and available at www.acuerdonacional.pe, accessed on 12 February 2011.

¹¹ Act No. 28237, Code of Constitutional Procedure, in force since 1 December 2004.

¹² Constitutional Court ruling in case No. 047–2004-AI/TC, argument 22.

¹³ Constitutional Court rulings in cases Nos. 00025–2005-PI/TC and 00026–2005-PI/TC (joined) and 2798–04-HC/TC.

of lower than constitutional rank, the judge must give preference to the provisions of the Covenant.

31. In this connection and on the basis of paragraph 9 of the Human Rights Committee's concluding observations on the fourth periodic report, the Inter-American Court of Human Rights declared in the *Barrios Altos* case¹⁴ that Amnesty Acts Nos. 26479 and 26492 enacted during the Government of Alberto Fujimori Fujimori were incompatible with the American Convention on Human Rights, were without legal effects and could not be invoked to avoid the investigation of acts constituting human rights violations, and extended this ruling of invalidity to all cases of human rights violations, over and above the *Barrios Altos* case, in which those Acts had been applied.¹⁵

32. Peru has ratified the Rome Statute of the International Criminal Court¹⁶ and in 2003 it ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity.¹⁷ In this connection, mention should be made of the Constitutional Court's ruling in Case No. 0024–2010-PI/TC, in which it declared Legislative Decree No. 1097 on the application of procedural norms in respect of crimes involving the violation of human rights to be unconstitutional in part. The Court ruled that the non-applicability of statutory limitations to crimes against humanity was a norm of *jus cogens* applicable at all times, with the result that the first final supplementary provision of Legislative Decree No. 1097 and, by extension, the statement contained in paragraph 1.1 of the sole article of Legislative Decision No. 27998 were unconstitutional.

33. The State is aware that, in order for the rights established in the Covenant to be ensured and respected, people must know about them. Because human rights education is mandatory (see annex 7),¹⁸ the State carries out human rights education, information and training events for public officials, State agents and the general public through various institutions. The National Human Rights Council (CNDH) also disseminates the rights contained in the Covenant and other international treaties, through lines of action developed on the basis of its competencies.¹⁹ For instance, the Council, in coordination with the Regional Office for South America of the Office of the United Nations High Commissioner for Human Rights (OHCHR), held a workshop on "The International Covenant on Civil and Political Rights, General Comments and Guidelines for the Preparation of Peru's Periodic Report" on 23 and 24 September 2010, attended by a total of 32 officials.

¹⁴ Judgment of the Inter-American Court of Human Rights on the merits of the case in *Barrios v. Peru* (14 March 2001). Available at www.corteidh.or.cr/docs/casos/articulos/Seriec_75_ing.pdf, accessed on 28 March 2011.

¹⁵ Ruling of the Inter-American Court of Human Rights of 3 September 2001 on the interpretation of the Judgment. The Constitutional Court has also ruled on the non-applicability of Amnesty Acts Nos. 26479 and 26492, finding them null and void: Case No. 4587–2004-AA, argument 63, and Case No. 679–2005-AA, arguments 50 and 60 (Martín Rivas cases); Case No. 00021–2010-PHC/TC, argument 8; and Case No. 2488–2002-HC/TC. Also, on the non-applicability of the Amnesty Acts, see Decision No. 815–2005-MP-FN of the Attorney General's Office.

¹⁶ Ratified by Supreme Decree No. 079–2001 and in force since 1 July 2002.

¹⁷ Adopted by Legislative Decision No. 27998 and ratified by Supreme Decree No. 082–2003.

¹⁸ Article 14 of the Constitution and Act No. 27741 establish that ethical and civic education and education on the Constitution, human rights and international humanitarian law are mandatory in all civil or military education processes and in university and non-university higher education. The National Human Rights Plan contains the same provision in strategic objective 2, strategic guideline 2.

¹⁹ CNDH regulations, Supreme Decree No. 015–2001-JUS. Dissemination of the basic human rights documents of the inter-American and United Nations systems to which Peru is a party, through annual publications available in paper form or in electronic form via its website, is especially important. States parties' periodic reports to the different United Nations treaty bodies and the latter's concluding observations can also be accessed via this portal.

34. With regard to the commitment to ensure an effective remedy for anyone whose rights or freedoms as recognized in the Covenant have been violated, the Peruvian legal system provides a number of remedies designed to protect or, where appropriate, restore the fundamental rights of persons. Anyone who considers his rights to have been violated has expeditious judicial access to a remedy under civil, family, labour, administrative or criminal law.

35. One mechanism for the protection of the rights established in the Covenant is the Code of Constitutional Procedure, which regulates the constitutional proceedings of *habeas corpus*, *amparo*, *habeas data*, compliance, action of unconstitutionality, popular action and conflicts of jurisdiction²⁰ provided for in the Constitution (articles 200 and 202 (3)), which are intended to ensure the primacy of the Constitution and the effective exercise of constitutional rights (see annex 8).

36. One of the most important steps taken by the Peruvian State in its efforts to combat impunity and begin the country's reconstruction was the establishment of the Truth and Reconciliation Commission (CVR).²¹ To comply with the Commission's recommendations, the State has created a mechanism for providing reparation for the injury caused to victims of the violence that occurred between 1980 and 2000. Its purpose is to recognize their status as victims, give them access to justice, restore their rights, help them deal with the consequences of the violation of their human rights and provide material and moral reparation for the injury suffered. To this end, in addition to the creation of a High-level Multisectoral Commission (CMAN)²² for the design and monitoring of State policies in the areas of peace, collective reparation and national reconciliation, a comprehensive National Reparations Programme (PIR) was set up to design and implement a national policy for compensating victims of the violence²³ and CMAN was entrusted with designing the Reparations Council, which is responsible for the Single Register of Victims (RUV).

37. Also in the context of complying with CVR recommendations, a judicial subsystem specialized in human rights²⁴ was created, giving the National Criminal Division jurisdiction to try cases involving crimes against humanity and ordinary crimes constituting human rights violations and related crimes.²⁵ Special prosecutor's offices and a National Criminal Prosecution Department were also created within the Public Prosecutor's Office, with

²⁰ In the case of *habeas corpus*, *amparo*, *habeas data* and compliance proceedings, the aim is to protect constitutional rights by restoring the situation to that prevailing before the violation or threatened violation of a constitutional right or ordering compliance with a legal mandate or an administrative act.

²¹ Adopted by Supreme Decree No. 065-2001-PCM of 4 June 2001, supplemented by Supreme Decree No. 101-2001-PCM of 4 August 2001.

²² Created by Supreme Decree No. 011-2004-PCM in order to establish a State mechanism for fulfilling the objectives of national reconciliation based on knowledge of the truth and reparation for the injury caused during the period of violence experienced by the country between 1980 and 2000. In this way, the State assumed its commitment to propose to the country the action needed to address the consequences of that period as part of its compliance with the recommendations of the Truth and Reconciliation Commission.

²³ Act No. 28592 and Supreme Decree No. 015-2006-PCM adopting its implementing regulations. CMAN is promoting formulation of the Multiannual Plan 2008-2011 at the three levels of Government involved with PIR, so that the various State entities responsible for PIR execution finance and execute programmes comprehensively.

²⁴ Administrative Resolution No. 170-2004-CE-PJ.

²⁵ Given the complexity of the trials heard by the subsystem, the time that has elapsed since the events in question and the fact that most cases of human rights violations occurred in the departments of Junín, Ayacucho and Huánuco, supra-provincial criminal courts were established in the Huánuco and Junín judicial districts and the relatives of victims of human rights violations were exempted from paying court costs.

functional competence to try the same crimes. Lastly, the Forensic Medicine Institute (IML) budget for searching for disappeared persons and exhuming clandestine graves was increased.

Article 3

38. Various measures have been taken in Peru to ensure gender equality, one of the main ones being the adoption of the National Equal Opportunity Plan for Men and Women 2000–2005, drawn up as part of the process of modernizing the State with the primary strategy of combating poverty. This was followed by a new Plan for 2006–2010,²⁶ adopted following a process of national consultation with the different State sectors and with civil society. The advances driven by the Plan include the drafting of regional equal opportunity plans. Five such plans had been adopted by 2008 and a further six were adopted in 2009, bringing the total to 11. By 2010, 15 of the country's 25 regional governments had adopted equal opportunity plans. However, action still needs to be taken to ensure that these plans envisage measures for securing a budget for their implementation.²⁷

39. Another major legislative advance was the adoption of Act No. 28983 on Equal Opportunity between Men and Women, which expands on the right to equality recognized in article 2 (2) of the Constitution. The Equal Opportunity Plan 2006–2010 is the technical and legislative instrument for the Act's implementation.

40. Supreme Decree No. 027–2007-PCM also established national policies, the implementation of which is mandatory for national Government entities. The second of these policies, on equality between men and women, must be promoted and implemented across the board by all public institutions and officials.²⁸

41. Measures taken to protect victims of domestic or family violence²⁹ include the adoption of the National Plan to Combat Violence against Women 2002–2007 following a nationwide process of consultation and coordination.³⁰ A Plan for 2009–2010,³¹ a continuation of the preceding Plan, has since been adopted and is now being executed.

42. The Ministry of Women and Social Development has been implementing the Plan through the National Programme to Combat Violence against Women³² and its emergency women's centres (CEM)³³. In 1999, the emergency women's service began with 13 centres;

²⁶ Adopted by Supreme Decree No. 009–2005-MIMDES.

²⁷ According to the fourth report of the Ombudsman's Office on the implementation of the Equal Opportunity Act, only 10 of the 15 plans that have been adopted specify measures for obtaining the resources needed to implement them.

²⁸ Each sector is required to adopt and publish by ministerial resolution specific goals and performance indicators for the half-yearly evaluation of compliance with national policies.

²⁹ In Peru, the term used is family violence, alluding to the special relationship among family members rather than the place where the violence occurs, which may be within or outside the home.

³⁰ Adopted by Supreme Decree No. 017–2001-PROMUDEH.

³¹ Adopted by Supreme Decree No. 003–2009-MIMDES.

³² The National Programme to Combat Violence against Women was incorporated into the organizational structure of the Ministry of Women and Social Development by Supreme Decree No. 008–2001-PROMUDEH.

³³ These centres are free, specialized public services providing comprehensive, interdisciplinary care to victims of family and sexual violence. They also provide legal guidance, judicial defence and psychological counselling services.

in 2010, there were 114 centres nationwide.³⁴ The centres also carried out 15,888 awareness-raising events nationwide to combat domestic violence between January and November 2010.

43. Since its adoption, one of the National Plan's main objectives has been to establish an information system so that appropriate decisions can be taken. Knowledge of the scale of family violence in the country and its characteristics, causes and consequences is essential. Accordingly, for the first time in Peru, the 2002 Population and Family Health Survey (ENDES) included a module on family violence. Subsequent changes to the survey yielded information on other aspects of family violence.³⁵ The National Programme, for its part, has been promoting the creation of reporting systems to increase the visibility of the problem of violence, in a context where information was previously scarce. It currently has a system of continuous statistics on family and sexual violence, which generates statistics based on administrative records³⁶ detailing the information gathered by emergency women's centres. It also coordinates with the Peruvian National Police (PNP) and the Public Prosecutor's Office in validating cases.

44. Another measure taken with regard to the problem of family violence was the enactment of Act No. 28236 creating temporary shelters for victims of family violence. There are currently 44 such shelters nationwide.

45. The Peruvian State has a National Sexual and Reproductive Health Strategy (ESNS) aimed at improving the sexual and reproductive health of Peru's population. Its main focus is on reducing maternal and perinatal mortality. Maternal mortality³⁷ as expressed in the maternal mortality rate indicator has declined by 44 per cent, from 185 to 103 maternal deaths per 100,000 live births. This decline can be attributed to pregnant women's increased access to health services, both for prenatal care and for institutional care in childbirth (childbirth attended by skilled health personnel in health-care establishments). While the State has made efforts to reduce the maternal mortality rate, action still needs to be taken, including continuing the expansion of health-service coverage appropriate to an intercultural environment, especially in the country's rural areas, and influencing the building of health-care establishments' decision-making capacities.

46. With regard to women's political participation, the State has opted since 1997 for the implementation of affirmative action enabling women to participate effectively in political life. The gender quota for women is currently 30 per cent of candidates on political lists and applies both to women standing for election to municipal councils and women candidates for election to regional councils, the Andean Parliament and the Congress of the Republic.

47. As a result, the proportion of women in Congress has gradually risen, from 18.3 per cent in 2001–2006 to 29.2 per cent in 2006–2011. The minimum quotas for men or women have also been incorporated in the lists of candidates for leadership positions in political parties.

³⁴ The centres handled 39,820 cases between January and November 2010, of which 175 were new or recurring cases. Specialized care, involving psychological, legal and social services for persons affected by family and sexual violence, was provided on 544,486 occasions. The 100 hotline also functions as a free telephone counselling service and provides a link between affected persons and the emergency women's centres, thereby helping to increase the number of cases reaching the centres.

³⁵ Available at www.desa.inei.gob.pe/endes, accessed on 25 February 2011. The Population and Family Health Survey is conducted within the framework of the global programme of demographic and health surveys, currently known as MEASURE DHS.

³⁶ Available at www.mimdes.gob.pe/archivos_sites/registro_pncvfs/estadisticas.htm, accessed on 25 February 2011. Statistics from the national reporting system on family and sexual violence.

³⁷ ENDES 2000 and ENDES 2009.

48. With respect to access to and continuation in the educational system, the latest information indicates that primary education coverage is almost total and the gap between boys and girls is minimal.³⁸ However, when that information is disaggregated by rural or urban area, differences emerge. The State still needs to implement policies ensuring access for girls, especially in rural areas.

49. Pursuant to the international normative framework, the State has designed and is now implementing such public policies as the National Plan of Education for All 2005–2015 and the National Educational Project to 2021: the Education We Want for Peru. These policies aim to eliminate gender disparities in primary and secondary education in order to achieve gender equality.

50. With regard to access to and continuation in the labour market, the gap between men and women has narrowed.³⁹ Further progress remains to be made, however. Women in work are generally employed in the less productive sectors of the economy. Thus, 77.5 per cent of women workers in Peru are employed in: (a) agriculture, livestock production and fisheries; (b) services; and (c) the retail trade.

51. It is possible to identify entities where the proportion of women in management positions has reached around 40 per cent on average: the Ministry of Women and Social Development, the Ministry of Foreign Trade and Tourism, the Ministry of Economy and Finance and the National Institute of Statistics and Data Processing (INEI).

52. The State prohibits and punishes sexual harassment.⁴⁰ The latest amendment to the relevant Act establishes that sexual harassment is not limited to relations of authority or dependence, regardless of the legal nature of this relationship, but may also occur in cases where there is no relationship of authority and dependence, in other words, between persons of the same rank, grade, position, function, pay level or the like.

53. In order to take affirmative action giving women access to the justice system, transitional family courts were established under the Lima High Court in May 2008. These courts succeeded in reducing the backlog of domestic violence cases by 90 per cent over the 30-month period following their creation. In 2009, a judicial protection division with jurisdiction over domestic violence cases was established at the headquarters of the Lima High Court.⁴¹

Article 4

54. In some exceptional situations, the Peruvian State has had to declare a state of emergency in certain parts of the country in response to serious disturbances of the peace or public order, disasters or serious circumstances threatening the life of the nation. In such cases, article 137 of the Constitution empowers the President of the Republic, with the agreement of the Council of Ministers and subject to informing the Congress of the Republic, to decree states of emergency for stipulated periods of time.

³⁸ Available at www.defensoria.gob.pe/inform-varios.php, accessed on 25 February 2011.

³⁹ The economically active population (EAP) in work in Metropolitan Lima has increased by 0.3 per cent or a monthly average of 11,500 persons, primarily as a result of the increase in women's participation in the labour market (by 2.2 per cent or 38,200 women), while the male EAP in work has fallen by 1.2 per cent (26,700 men). Of the total EAP in work in Metropolitan Lima, 55.5 per cent (2,249,900 persons) are men and 44.5 per cent (1,800,600) are women.

⁴⁰ Act No. 27942 on the Prevention and Punishment of Sexual Harassment was adopted in 2003 and amended on 8 November 2009 by Act No. 29430. It should be noted that, in Peru, sexual harassment is subject to administrative rather than criminal penalties.

⁴¹ Adopted by Administrative Resolution No. 186–2009-CE-PJ.

55. The same article enumerates the rights that may be restricted, for instance, the rights to liberty and security of person, inviolability of the home and freedom of assembly and movement (art. 2, paras 9, 11, 12 and 24 (f)).

56. The suspension of rights by virtue of the declaration of a state of emergency does not in any way mean that citizens cannot institute actions for the safeguarding of rights (*habeas corpus* and *amparo*) as guaranteed by the penultimate paragraph of article 200 of the Constitution. As that paragraph indicates, it is up to the competent judicial body to examine whether the restriction of rights in a given case is reasonable and proportionate, without this meaning that the judge has the power to question the declaration of the state of emergency itself.

57. Peru has complied with article 4 of the Covenant by informing the other States parties, through the United Nations Secretariat, of any decisions it has taken in which there was a need to declare a state of emergency and suspend rights.

58. It should also be mentioned that, at present, states of emergency are in effect in only a few districts of some provinces in the departments of Ayacucho, Huancavelica, Cuzco, Junín, Huánuco, San Martín and Ucayali. A state of emergency was declared in these places basically because of the situations of violence faced in the Alto Huallaga valley⁴² and the Apurímac and Ene River Valley (VRAE),⁴³ where some remaining terrorists are working with groups of drug traffickers.

59. The Peruvian National Police is responsible for guaranteeing, maintaining and restoring law and order (art. 166 of the Constitution). To this end, it is active throughout the national territory and above all in areas where a state of emergency has been declared. However, the armed forces may provide support and assume control of law enforcement if the President of the Republic so orders (arts 137 and 165 of the Constitution).

60. After the Constitutional Court ruled in January 2003 that Peru's anti-terrorist legislation was unconstitutional, legislation was developed that was consistent with international standards for the protection of human rights. Laws were also adopted to ensure that human rights offences are prosecuted more effectively. The results of this effort are reflected in the rulings of the Inter-American Court of Human Rights on the cases submitted to it, in which the Court acknowledges the changes that have occurred in Peru in this regard.

61. Annex 9 contains a table of supreme decrees declaring states of emergency in various parts of the country.

Article 5

62. By virtue of article 3 of the Constitution, the list of fundamental rights in chapter I does not exclude the other rights guaranteed by the Constitution, nor other similar rights or rights based on the dignity of the person. In other words, all human rights set forth in treaties ratified by the Peruvian State are constitutional rights. As a result, the rights recognized in the Covenant are enshrined in the Constitution and hence in the domestic legislation of Peru.

⁴² The Alto Huallaga area comprises the Cholon district of Marañon province, the Monzon district of Huamalies province; and in Leoncio Prado province, districts of the department of Huánuco; Tocache province in the department of San Martín; and Padre Abad province in the department of Ucayali.

⁴³ The VRAE area comprises the provinces of Huanta and La Mar in Ayacucho department; Tayacaja province in Huancavelica department; the Kimbiri, Pichari and Vilcabamba districts of La Convención province in Cuzco department; Satipo province; the Andamarca and Comas districts of Concepción province; and the Santo Domingo de Acobamba and Pariahuanca districts of Huancayo province in Junín department.

63. Accordingly, it is impossible to engage in activities or acts aimed at the destruction of rights and freedoms recognized in the Covenant without contravening Peru's Constitution and laws.

64. It is also impossible to justify such actions on the basis of interpretations that are contrary to the spirit and the letter of the Covenant, since the fourth final provision of the Constitution establishes that norms on the rights and freedoms recognized in the Constitution shall be interpreted in accordance with the Universal Declaration of Human Rights and with the international treaties and agreements on the same subjects ratified by Peru.

65. Bearing in mind that, under international human rights law, the work of interpreting human rights treaties is governed by special principles, the Constitution can be said to have incorporated indirectly into domestic law the three principles governing the interpretation of human right treaties: the *pro homine* principle, the principle of the interpretative interaction of human rights treaties and the principle of dynamic interpretation. The proper interpretation of the Covenant's provisions is thus guaranteed by the Constitution itself.

Article 6

66. Peru's Constitution recognizes the right to life⁴⁴ and the death penalty is envisaged only in cases of treason, war or terrorism.⁴⁵ The 1979 Constitution limited the death penalty to treason in the event of a foreign war, making it irreversibly the only crime for which Peru can impose capital punishment. In Peru's case, the application of the death penalty cannot be extended to other situations because of the clearly abolitionist spirit of the American Convention on Human Rights.

67. A de facto moratorium on the application of the death penalty can be considered to exist in Peru, since the only possible case in which it can be applied is treason in the event of a foreign war.

68. Likewise, with regard to extradition, if the State believes that respect for the human rights of the person to be extradited cannot be guaranteed, it may make its compliance with the extradition request conditional on the requesting State giving assurances that the extradited person's human rights will be respected. Article 517 of the new Code of Criminal Procedure establishes that extradition will also not be ordered when the crime for which extradition is requested is subject to the death penalty in the requesting State and that State does not give assurances that the death penalty will not apply.

69. Since the right to life is a constitutional right, its protection is guaranteed under both ordinary law (ordinary judicial proceedings) and special protective law, such as constitutional proceedings,⁴⁶ particularly *amparo*, which, in the event of a threat to or a violation of the right to life, provides a summary mechanism for restoring the situation to that pertaining before the threat or violation or for preventing its recurrence.

70. In this connection, the Constitutional Court has ruled that "(...) the right to life is the primary fundamental right, since without it the other rights cannot exist. Not only is it a recognized fundamental right, but it is also a superior value of the legal system (...)."⁴⁷

71. Under the ordinary legal system, book 2, title I, of the Criminal Code defines crimes against life, body and health, including homicide (art. 106), murder (art. 108), aiding and

⁴⁴ Political Constitution of Peru, art. 2(1).

⁴⁵ *Ibid.* art. 140.

⁴⁶ Constitutional proceedings are all regulated by the Code of Constitutional Procedure.

⁴⁷ Constitutional Court ruling in Case No. 06057-2007-PHC/TC.

abetting suicide (art. 113) and abortion (art. 114); the affected rights are thus protected through criminal proceedings, with the procedural guarantees established in the Constitution and the new Code of Criminal Procedure.⁴⁸

72. Chapter I of title XIV-A of the Criminal Code,⁴⁹ entitled “Crimes against humanity”, also defines genocide (art. 319), while chapter II defines the crime of enforced disappearance (art. 320).

Truth and Reconciliation Commission

73. Because of the internal violence experienced in Peru between 1980 and 2000, a Truth and Reconciliation Commission was established,⁵⁰ entrusted primarily with producing a report on the internal armed violence experienced during that period and proposing initiatives for strengthening peace and reconciliation among all Peruvians. The Commission’s final report noted that acts such as those that had occurred during the period in question were a flagrant violation of the right to life. The Comprehensive Reparations Programme (PIR) was set up as the technical and normative instrument establishing the principles, approaches, objectives, policies and actions that must guide State action at the three levels of government in providing reparation for victims of the violence that occurred in the country.⁵¹

74. The Comprehensive Reparations Programme comprises components such as the restoration of citizens’ rights; educational reparations; health reparations; collective reparations; symbolic reparations; the promotion and facilitation of access to housing; and economic reparations. The Programme’s beneficiaries are direct and indirect victims, relatives of disappeared or deceased victims and groups of people whose individual human rights were violated as a result of the sheer concentration of mass violations, as well as people whose social structure was damaged through the violation of their collective rights.

75. The implementation of the Programme’s components is dependent on the progress made by the Reparations Council⁵² in compiling the Single Register of Victims (RUV). In the meantime, the High-level Multisectoral Commission (CMAN) is promoting formulation of the Multiannual Programme 2008–2011 at the three levels of government involved in the Reparations Programme, in order to ensure that the respective State entities responsible for executing the Programme fund and implement its components fully.⁵³

76. The Reparations Council has reported the registration of 114,959 individual victims; 5,665 collective victims, including victims with disabilities, rape victims and relatives of deceased and disappeared persons; and six displaced persons’ organizations.⁵⁴

⁴⁸ Legislative Decree No. 957, New Code of Criminal Procedure, published on 29 July 2004.

⁴⁹ Title incorporated in the Criminal Code by article 1 of Act No. 26926, published on 21 February 1998.

⁵⁰ Created by Supreme Decree No. 101–2001-PCM in June 2001. The Commission gathered testimony from 16,985 persons and organized 21 hearings with victims of violence, which were attended by 9,500 persons.

⁵¹ The Commission’s final report estimated that the most likely number of victims killed in the violence was 69,280, the peasant population being the main victim: 79 per cent of victims lived in rural areas and 56 per cent were engaged in agricultural activities.

⁵² The Reparations Council is compiling the Single Register of Victims (RUV), the instrument used by the State institutions responsible for implementing the Reparations Programme.

⁵³ Under Act No. 28592 on the Comprehensive Reparations Programme and its implementing regulations, adopted by Supreme Decree No. 015–2006-JUS, the implementation of reparations programmes is not conditional on completion of the Single Register of Victims, since the latter’s compilation is ongoing.

⁵⁴ Available at www.registrodevictimtas.gob.pe/banner.html, accessed on 28 March 2011.

77. The Ombudsman's Office has also processed, either officially or at the request of injured parties, numerous complaints of the alleged violation of fundamental rights within military units, specifically, violations of the right to life and integrity of person. Most of the victims were young men performing military service. Military service used to be compulsory but is now voluntary.⁵⁵

78. In keeping with constitutional and treaty precepts of respect for life, the Ministry of Defence has a code of conduct for law enforcement officials, comprising a set of fundamental norms that law enforcement personnel must observe in all situations and circumstances in order to maintain respect for and the permanent validity of human rights, as well as a handbook of international humanitarian law and human rights.⁵⁶ There is also a human rights handbook for the police, which establishes the procedures and methods to be used in police operations in order to safeguard respect for human rights and the procedure for guaranteeing respect for the fundamental human rights of persons (civilians and police) in the direction, organization and execution of operations to control, maintain and restore public order.

79. In this connection, Legislative Decree No. 982⁵⁷ states that members of the armed forces and the police are not criminally liable for any injuries or deaths they may cause in performing their duties and using their weapons in accordance with the regulations.

80. It should be noted that the Peruvian State, by means of Supreme Resolution No. 544-2010-RE, has submitted documentation on the Convention on Cluster Munitions to the Congress of the Republic with a view to the adoption of that international instrument.

Homicide

81. By resolution No. 1485-2005-MP-FN of the Attorney General's Office,⁵⁸ the Public Prosecutor's Office set up a Crime Observatory to provide objective, comparable information on all variables associated with the problem of crime, thereby permitting the monitoring and control of all criminal acts from intervention to sentencing in order to implement more effective anti-crime policies and actions.

82. The Crime Observatory is monitoring the incidence and characteristics of femicide and homicide nationwide. Its main findings include ⁵⁹ 2,009 cases of homicide, with a total of 2,353 victims, of whom 20.3 per cent (478) were women and 79.7 per cent (1,875) were men.

83. Of the 478 women victims of homicide, 46.4 per cent (222) were victims of femicide—190 victims of intimate femicide⁶⁰ and 32 victims of non-intimate homicide⁶¹—and a further 84 (17.6 per cent) were possible victims of femicide.

84. In order to identify some of the criteria used by judicial personnel in investigating and punishing cases in which women were killed by their partners or former partners and thus evaluate how they deal with the problem of violence against women, the Ombudsman's Office produced a report entitled "Femicide in Peru: a study of judicial cases"⁶²

85. Of the 1,875 male victims of homicide, 56.2 per cent (1,053) were killed allegedly by someone they did not know, 2.1 per cent (39) by their partner or ex-partner, 5.6 per

⁵⁵ Act No. 29248 of 28 June 2008 on military service, which entered into force on 1 January 2009.

⁵⁶ Adopted by Vice-Ministerial Resolution No. 049-2010/DE/VPD of 21 May 2010.

⁵⁷ Legislative Decree No. 635 of 22 July 2007 amending the Criminal Code.

⁵⁸ Dated 8 June 2005.

⁵⁹ Between January 2009 and October 2010.

⁶⁰ Where the victim's killer is an intimate partner.

⁶¹ Where the victim's killer is neither an intimate partner nor a relative.

⁶² Report No. 04-2010/DP-ADM of December 2010.

cent (105) by a relative and 7.8 per cent (148) by someone they knew. In 28.2 per cent of cases (529), there is no information on the killer. There is one case where the victim died at the hands of a female sex worker.

Enforced disappearance

86. A total of 162 complaints of enforced disappearance are currently under investigation by prosecutors.⁶³

87. As of October 2010, 13 trials for enforced disappearance were being heard by the National Criminal Division.

88. A total of 73 trials for crimes against humanity are being heard by the Lima supra-provincial criminal courts.⁶⁴

89. A total of 20 individuals are being tried by special courts for crimes against humanity.⁶⁵

90. A total of 265 individuals have been charged with crimes against humanity by national criminal prosecutor's offices⁶⁶

91. It should also be noted that, as instructed by Act No. 28413,⁶⁷ the Ombudsman's Office has been responsible since 2005 for verifying cases of enforced disappearance in order to obtain the information needed to regularize the legal status of disappeared persons. As of July 2010, 2,957 requests for verification had been received and 1,981 investigations had been completed, resulting in the certification of 1,540 cases of absence by reason of enforced disappearance and the reunification of three families who had become separated as a result of the violence.

92. This certification of cases of enforced disappearance enables victims' families to institute judicial proceedings for the judicial declaration of absence by reason of enforced disappearance (Act No. 28413).

Unwanted pregnancy

93. According to the National Institute of Statistics and Data Processing (INEI), the teenage pregnancy rate has risen from 12.2 per cent (ENDES 2004–2006) to 13.7 per cent (ENDES 2009). The figures are much higher among the poorest, least educated adolescents.

94. With regard to unplanned teenage pregnancies, Peru has implemented the Andean Plan for the Prevention of Adolescent Pregnancy.

⁶³ There are 74 complaints lodged with the first supra-provincial criminal prosecutor's office of Ayacucho; 57 with the second supra-provincial prosecutor's office of Ayacucho; four with the supra-provincial criminal prosecutor's office of Huancavelica; 24 with the third provincial criminal prosecutor's office of Huancayo; six with the first supra-provincial criminal prosecutor's office of Lima; one with the third supra-provincial prosecutor's office of Lima; and two with the fourth supra-provincial criminal prosecutor's office.

⁶⁴ Of the accused, 24 are members of the Peruvian army, eight are members of the national police; 34 are members of the navy; and seven are from other groups.

⁶⁵ Of whom 18 are members of the army and two are members of other groups.

⁶⁶ Of whom 170 belong to the army, 47 to the police, two to the navy, six to the air force and 40 to other groups, making a total of 358 persons charged with crimes against humanity.

⁶⁷ Act No. 28413 of 11 December 2004 on absence by reason of enforced disappearance during the period 1980–2000.

95. Nationwide, there are 750 health-care establishments that provide services for adolescents at different times from other users, since teenagers are afraid or ashamed to be seen by adults or other people who attend hospitals and health centres.

96. Since 1999, Peru has had a national budget for purchasing the entire range of contraceptive methods. This, combined with the building of health-care providers' technical capacities and the provision of sexual and reproductive health information, guidance and counselling, has reduced unmet demand to 7.2 per cent.

97. The results-based budget of the neonatal and maternal health programme, the specific objective of which is "a population with sexual and reproductive health knowledge and using family planning methods", has been executed.

Abortion

98. At present, therapeutic abortion is the only case of abortion that is not punishable (art. 119 of the Criminal Code). The special congressional committee on the revision of the Criminal Code has adopted a preliminary draft Code that incorporates two further grounds on which abortion is permitted, namely, the existence of birth defects and pregnancy resulting from rape.

99. In 2000, 8.4 per cent of maternal deaths occurred as a result of abortion; in 2005, out of a total of 596 maternal deaths, 8.5 per cent were abortion-related, while in 2009, out of a total of 365 deaths, 11.6 per cent were abortion-related.

Maternal and child mortality

100. In 2000, 15 per cent of maternal deaths occurred among adolescents, while in 2009, the proportion was 13.4 per cent.

101. Maternal mortality has declined from 265 per 100,000 births in the base year of 1990 to 103 today, meaning that the maternal mortality goal has been achieved.

102. It should be noted that a Concerted National Health Plan 2007–2020 is being implemented to reduce maternal mortality, one of its aims being to expand access to family planning.

103. With regard to maternal and perinatal mortality, a National Plan for the Reduction of Maternal and Perinatal Mortality 2009–2015 is being implemented.

104. In 2009, for every 1,000 live births in the country, 20 children would die before the age of 1 year; in 2000, the figure was 33 for every 1,000 live births.⁶⁸ Although the figures have improved, there are differences by area of residence and region: while the infant mortality rate was 17 per 1,000 live births in urban areas, it was 27 per cent in rural areas. Diseases commonly associated with infant mortality are diarrhoea, pneumonia, malnutrition and other vaccine-preventable diseases.

105. In the period 1991/92 to 2009, which covers a little over two thirds of the period for achieving the Millennium Development Goals (by 2015), Peru made considerable progress with regard to the health of its population, particularly the population aged under 1 year. In this group, mortality was reduced by 63.6 per cent, the greatest reduction occurring in rural areas, where the rate dropped by 65.4 per cent between 1991/92 and 2009, close to the target of reducing the number of deaths per 1,000 live births to 26 by 2015. In urban areas, mortality fell by 57.5 per cent; the goal for 2015 is 13 deaths per 1,000 live births.

⁶⁸ ENDES, the Population and Family Health Survey, is carried out under the global programme of population and health surveys.

106. The under-5 mortality rate fell from 92 per 1,000 live births in 1990 to 31 in 2008, achieving the target for 2015 set in the Millennium Development Goals.

107. The percentage of births attended by skilled health personnel increased from 59.3 per cent in 2000 to 82.5 per cent in 2009.

108. Expanding the scope of adult and child immunization campaigns has made it possible to eradicate measles and German measles and reduce yellow fever and hepatitis B, thereby improving the population's life chances. These are significant improvements and, in some cases, represent the achievement of specific goals ahead of the deadline set in the Millennium Declaration.

109. A Framework Act on Universal Health Insurance⁶⁹ has been adopted to ensure that the resident population has insurance providing timely access to a range of quality preventive, promotional, convalescent and rehabilitative health services, on the basis of an essential health insurance plan that currently covers 65 per cent of the disease burden and 80 per cent of spontaneous demand.

Status of embryos

110. There is no specific law on the legal status of embryos, but there are some statutory regulations in force, such as the Children and Adolescents Code,⁷⁰ the General Health Act⁷¹ and the Clinical Trials Act,⁷² which prohibit the fertilization of human eggs for purposes other than procreation. Through Ministerial Resolution No. 373-2008-TR,⁷³ the Ministry of Labour and Employment Promotion adopted the list of physical, chemical, biological, ergonomic and psychosocial agents that generate risks for the health of pregnant women and/or the normal development of the embryo and the foetus, their corresponding intensities, concentrations or levels of presence and the periods in which they affect pregnancy; the list of high-risk activities, processes, operations or tasks, equipment or products; and guidelines enabling companies to assess their risks.

111. The Ministry of Energy and Mines, through Supreme Decree No. 009-97-EM,⁷⁴ adopted radiological safety regulations which stipulate that diagnostic or therapeutic procedures must be avoided that result in exposure of the abdomen of a woman who is, or is probably, pregnant, unless there are strong clinical indications for using them, in which case all necessary protective measures must be taken to reduce the doses to the embryo or foetus.

Article 7

112. With the State party's ratification of international instruments prohibiting torture, a provision characterizing torture as a prosecutable crime was incorporated into the Criminal Code by means of Act No. 26926,⁷⁵ introducing title XIV-A entitled "Crimes against humanity". The crime of torture was thus incorporated for the first time in article 321 of the Criminal Code. Cruel, inhuman or degrading treatment or punishment is not criminalized in Peru's criminal law. It should be mentioned that the National Human Rights Council, after

⁶⁹ Act No. 29344 of 9 April 2009.

⁷⁰ Act No. 27337 of 7 August 2000, the Children and Adolescents Code.

⁷¹ Act No. 26842 of 20 July 1997, the General Health Act.

⁷² Adopted by Supreme Decree No. 017-2006-SA of 29 July 2006.

⁷³ Dated 30 November 2008.

⁷⁴ Dated 29 May 1997.

⁷⁵ Act No. 26926 amending various articles of the Criminal Code and incorporating title XIV-A on Crimes against Humanity, promulgated on 21 February 1998.

considerable discussion among its members and with the backing of the Ministry of Justice, decided to propose that the Ombudsman's Office should be designated the national mechanism for the prevention of torture. As a result, a bill creating and designating the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment has been drafted, which designates the Ombudsman's Office as the implementing body. The bill is currently the subject of inter-ministerial consultations.

113. Article 321 of the Criminal Code defines the crime of torture as occurring in a situation where "a public official or public servant, or anyone acting with his consent or acquiescence, inflicts severe pain or suffering, whether physical or mental, on a person or subjects him to conditions or methods that, while not causing physical pain or psychological distress, undermine his personality or diminish his physical or mental capacity, for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he has committed or is suspected of having committed, or intimidating or coercing him (...)". Article 321 of the Criminal Code defines two situations with a view to establishing the corresponding penalties.⁷⁶

114. There are also other additional norms, such as the forensic examination procedures for the detection of injuries or death resulting from torture⁷⁷ and resolution No. 627-2000-MP-CEMP⁷⁸ of the Public Prosecutor's Office, making those procedures mandatory in all Forensic Institute units. In 2005, the Institute presented a proposal for the application and adaptation of the Istanbul Protocol, also known as the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, given the need for a tool for evaluating torture that would meet all the requirements for documenting torture. Since such a tool was lacking from the forensic procedures established by the Public Prosecutor's Office, the Istanbul Protocol has been in use since 2005.

115. The applicable norm prohibiting the use and admissibility in judicial proceedings of statements or confessions obtained by means of torture or other prohibited treatment is the Constitution, article 2 (24) (h) of which stipulates that statements obtained by violence are invalid and that anyone who uses violence is criminally liable. Resolution No. 628-2000-MP-CEMP⁷⁹ of the Executive Commission of the Public Prosecutor's Office broadens the scope of the relevant provisions for guaranteeing respect for the fundamental rights of persons detained in police establishments, set forth in Circular No. 001-99-MP-CEMP. The circular states that provincial criminal prosecutors and their auxiliaries have an obligation, in prosecuting crimes impartially, to ensure that persons who are under investigation or have been unlawfully detained and whose physical or mental integrity has been violated are questioned in order to verify whether they were subjected to torture, inhumane treatment or other severe pain or suffering, whether physical or mental, and, if so, to order a forensic

⁷⁶ With regard to the penalties applicable to the crime of torture, article 321 of the Criminal Code defines two situations with a view to establishing the corresponding penalties. In the first, basic situation, torture is punishable by no less than five and no more than 10 years' imprisonment. In the second, aggravated situation, where torture results in serious injury and the torturer could have foreseen this outcome or where torture results in death, the respective penalties are no less than six and no more than 12 years' imprisonment and no less than eight and no more than 20 years' imprisonment.

⁷⁷ Resolution No. 705-98-CEMP of 3 November 1998 of the Executive Commission of the Public Prosecutor's Office, Forensic examination procedures for the detection of injuries or death resulting from torture.

⁷⁸ Resolution No. 627-2000-MP-CEMP of 12 September 2000.

⁷⁹ Resolution No. 628-2000-MP-CEMP of 12 September 2000 of the Executive Commission of the Public Prosecutor's Office.

examination within 48 hours of the person's arrest and also to order and/or supervise, as appropriate and within their sphere of competence, the conduct of such forensic examination when the detainee is moved from the place of detention. Likewise, resolution No. 1517-2003-MP-FN of the Attorney General's Office approved the format of the report on the detainee's rights that all provincial prosecutors are required to fill out in all investigations in which the Public Prosecutor's Office is notified that a person has been detained. This document helps to protect the fundamental rights of detainees.

116. With regard to the procedures for reporting acts of torture and ill-treatment committed by prison personnel, the prison administration stipulates that the detainee making the complaint must be isolated from the prison population, taken to the health area for immediate medical attention and placed in an environment offering guarantees of safety for his physical and psychological integrity, so that internal investigations can then be conducted and a complaint lodged with the competent authorities. It should be mentioned that representatives of both the Public Prosecutor's Office and the Ombudsman's Office visit prisons regularly in order to channel allegations of torture and ill-treatment to the corresponding authorities.

117. With regard to the procedures for reporting acts of torture and ill-treatment in the armed forces, the Peruvian Air Force has established a complaints office, which operates out of the office of its General Inspectorate. There are plans to set up in every air force unit nationwide a register in which any kind of human rights violation is recorded. The air force has also adopted and disseminated directive FAP 35-5, detailing the procedures whereby personnel can lodge complaints through the inspectorates of each air force unit in first instance, the General Inspectorate of the Air Force in second instance and the General Inspectorate of the Ministry of Defence in third and final instance.

118. In both the navy and the army, the procedures for reporting acts of torture and ill-treatment derive from the disciplinary rules governing the armed forces,⁸⁰ which include the penalties applicable to anyone who violates the rights of the person. In the army's case, a soldier who files a complaint is rotated to another unit to avoid any subsequent harassment or reprisals.

119. With regard to the police, Act No. 29356 enacting the disciplinary rules governing the Peruvian National Police establishes the procedure for investigating and imposing administrative penalties on members of the police who engage in acts of torture or inhuman, degrading, discriminatory or abusive treatment against persons in their custody, without prejudice to the establishment of their criminal responsibility and punishment by the judicial system.

120. In any case where there is sufficient evidence to support the allegation of torture, the Public Prosecutor's Office may, either officially or at the request of the injured party, launch an investigation into the alleged commission of a crime of torture. In the period under consideration (September 2004 to February 2011), 37 sentences were passed in cases of torture: 17 convictions, 19 acquittals and one withdrawal of the accusation. This shows that the number of cases of torture has declined (see annex 10).

121. As regards redress in cases of torture, compensation is set once the criminal responsibility of the perpetrator has been established. Thus, the amount that the perpetrator will have to pay in compensation under civil law is determined at the same time as his prison term. Annex 10 details the amounts that the National Criminal Division has ordered perpetrators to pay in civil compensation. In the case of the torture conviction handed down in case No. 09-05, the National Criminal Division ordered that the injured party should

⁸⁰ Act No. 29131 enacting the disciplinary rules governing the armed forces.

receive free physical and mental health care for the injury suffered until he had completely recovered. Similarly, in case No. 22–08 involving the infliction of serious injuries, the National Criminal Division ordered the army, through the military hospital, to provide free physical and mental health care to the injured party for the injury suffered, until his complete recovery. These sentences show that the State is providing comprehensive reparation for victims in cases of torture.

122. Different sectors have been taking measures to inform the population about the prohibition against torture and other cruel, inhuman or degrading treatment. With regard to the training of law enforcement officials, the Ministry of the Interior, the Ministry of Defence and the National Prison Institute have been training their members through various education and training workshops.

123. The Ministry of the Interior adopted the police human rights handbook⁸¹ in order to promote and strengthen conduct respectful and protective of human rights, including the prohibition of torture, in the performance of police functions and activities. To this end, it has made use of the handbook mandatory for serving police officers and has had the handbook disseminated and its content incorporated into the teaching curriculum for the different levels of police training. Among other instruments, the handbook emphasizes teaching of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

124. The Ministry of Defence, for its part, has been imparting education on human rights and international humanitarian law to members of the armed forces through the Centre for International Humanitarian Law and Human Rights.

125. With regard to prison personnel, the National Prison Institute (INPE), the governing body of the national prison system, has arranged for contents on respect for human rights and the prohibition of torture to be included as cross-cutting elements in the training curriculum of the National Centre for Criminological and Prison Studies (CENECP)⁸² and, in general, in all training activities on both treatment and safety, as well as in refresher and retraining courses. The Institute has also approved a human rights handbook for the prison service,⁸³ the main focus of which is respect for the dignity and human rights of persons deprived of their liberty. It is important to emphasize that the handbook expressly establishes the prohibition against engaging in torture and other cruel, inhuman or degrading treatment.

126. It is important to mention that, since then, the number of complaints of torture received by the Ombudsman's Office has declined considerably. In May 2009, the Public Prosecutor's Office also reported a reduction in reports of torture (see annex 11).

127. With regard to the training of judges and magistrates belonging to the judiciary and the Public Prosecutor's Office, the Dr. Gonzalo Ortiz de Zevallos Roedel School of the Public Prosecutor's Office and the Judicial Training School provide training to judges and magistrates on the prohibition of torture and other cruel, inhuman or degrading treatment or punishment.

128. Concerning the disciplinary methods used in schools and other educational establishments, the Ministry of Education, by Ministerial Resolution No. 0405–2007-ED of

⁸¹ Adopted by Ministerial Resolution No. 1452–2006-IN of 31 May 2006.

⁸² Unit responsible for providing training and specialized training to prison personnel.

⁸³ Available at www2.inpe.gob.pe/portal/archivos/upload/trabajos/Manual_De_Derechos_Humanos.pdf, accessed on 20 August 2010. Human rights handbook for the prison service, adopted by means of Presidential Resolution No. 411–2008-INPE/P of 18 July 2008, drafted by a commission composed of representatives of INPE and the Human Rights Commission, with advice from the Ombudsman's Office and the International Committee of the Red Cross (ICRC).

10 September 2007, adopted guidelines for dealing with cases of physical and/or psychological abuse, sexual harassment and violation of the sexual liberty of students in educational establishments, the aim being to establish additional procedures and guidelines for the formulation and handling of complaints of such abuse and/or harassment and/or violation of sexual liberty of students by the managerial, teaching and administrative staff of educational institutions.

129. With respect to the measures guaranteed by the State to ensure that no one is extradited, expelled or deported or otherwise forced to leave its territory when there are substantial grounds for believing that there is a risk of irreparable harm to that person, the Peruvian State evaluates and analyses whether the requesting State fulfils the guarantees of fair administration of justice, pursuant to the provisions of Peru's domestic legislation contained in article 516 (2) of the new Code of Criminal Procedure.⁸⁴

130. With regard to the issue of torture, the State party could request assurances from the requesting State that the person will not be subjected to torture or other cruel, inhuman or degrading treatment or punishment. If the requesting State does not give such assurances or provide proof that the person will not be exposed to the certain risk of ill-treatment, extradition will not be granted.

Article 8

131. Article 2 (24) (b) of Peru's Constitution prohibits slavery, servitude and all forms of human trafficking. Peru has signed and acceded to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,⁸⁵ also known as the Palermo Protocol. Since people trafficking is a problem in the country,⁸⁶ the Peruvian State has taken various actions to combat it. A standing multisectoral working group against trafficking in persons has been established,⁸⁷ one of the main achievements of which has been the drafting and promulgation of Act No. 28950⁸⁸ against trafficking in persons and migrant trafficking and its implementing regulations.⁸⁹ The Act takes a comprehensive approach to people trafficking, criminalizing it in line with the Palermo Protocol and introducing actions and measures from the three standpoints of prevention, prosecution and assistance to victims.

⁸⁴ Article 516 of the new Code of Criminal Procedure, Scope. "(...) 2. The granting of extradition is conditional on the existence of guarantees of the fair administration of justice in the requesting State and on whether the requesting State has had a prior request for extradition turned down by a third State on the grounds that it was politically motivated. The Attorney General's Office and the Ministry of Foreign Affairs may report on whether there are any questions or background on the requesting State in this regard".

⁸⁵ The Peruvian State has adopted and ratified the Convention against Transnational Organized Crime and its additional Protocols, namely, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol against the Smuggling of Migrants by Land, Sea and Air (adopted and ratified by Legislative Resolution No. 27527 and Supreme Decree No. 088-2001-RE respectively).

⁸⁶ A high incidence of people trafficking has been detected in the cities of Lima, Cuzco and Puerto Maldonado.

⁸⁷ Supreme Decree No. 002-04-IN of 20 February 2004.

⁸⁸ Published on 16 January 2007.

⁸⁹ Supreme Decree No. 007-2008-IN of 30 November 2008. This instrument develops sectoral obligations in the three areas of prevention, prosecution and victims' protection, using a decentralized approach and proposing links with regional and local governments, for instance, by promoting the creation of inter-agency task forces to combat people trafficking in the regions.

132. In the context of the group's work in the area of prevention, the State has undertaken activities to build the capacity of public officials and vulnerable populations to identify and act on cases of trafficking (see annex 12). With regard to prosecution, the criminalization of people trafficking as a serious offence in labour relations has included the trafficking or kidnapping of persons for paid or unpaid forced labour.⁹⁰ The strengthening of criminal procedural law for the investigation of this crime is also noteworthy.⁹¹ People trafficking has likewise been criminalized in relation to the provision of tourism services and the definition of guest houses, when tourism service providers promote or permit sexual trafficking of minors.⁹² Emergency Decree No. 012–2010⁹³ was adopted to reduce the negative impact of informal or illegal gold mining in the department of Madre de Dios, which includes the problem of human trafficking, and thus ensure the sustainable, orderly use of natural resources.

133. The working group has succeeded in institutionalizing the Registration and Statistical System on the Crime of Trafficking in Persons and Related Crimes (RETA-PNP),⁹⁴ which contains qualitative and quantitative information on complaints and police operations and investigations with regard to trafficking in persons⁹⁵ (see annex 13).

134. In the area of assistance for victims, mention should be made of the anti-trafficking hotline supported by the International Organization for Migration (IOM);⁹⁶ the adoption of the procedural guide for interviewing child and adolescent victims of sexual abuse, exploitation and trafficking for purposes of exploitation,⁹⁷ which is designed, inter alia, to avoid revictimization and give public defenders the power to file complaints and provide legal defence for victims of the crime of human trafficking;⁹⁸ and the National Care Programme for Victims and Witnesses.⁹⁹ Despite these advances, action needs to be taken to rescue, protect and monitor trafficking victims and this requires resources for such measures as the establishment of shelters for victims.

135. In 2004, a people trafficking unit was set up within the National Police division that deals with kidnappings, which was then upgraded to the Anti-Trafficking Division of the National Police's Criminal Investigation and Judicial Support Department.¹⁰⁰ The powers

⁹⁰ Article 25(18) of the implementing regulations of the General Inspections Act, Supreme Decree No. 019–2006.

⁹¹ Article 2 of Legislative Decree No. 989.

⁹² Implementing regulations of Act No. 28868—Supreme Decree No. 007–2007-MINCETUR.

⁹³ Of 18 February 2010, supplemented by Emergency Decree No. 004–2100 of 5 February 2011.

⁹⁴ Ministerial Resolution No. 2570–2006-IN-0105 of 4 January 2007. Directive No. 004–2007-IN/0105 established procedures for the use, recording, consultation and transport of data.

⁹⁵ The RETA system has recorded 346 complaints of people trafficking. According to statistics, there were two cases in 2004, four in 2005, 10 in 2006, 73 in 2007, 82 in 2008, 85 in 2009, 84 in 2010 and six in 2011. The territorial department with the most complaints is the 10th (Cuzco), with 65 complaints, followed by Iquitos, Arequipa and Puno (58, 43 and 28 cases respectively). The vast majority (260) concern cases of sexual exploitation. This explains why, out of a total of 820 victims, 753 (91.83 per cent) are women. Around half of victims (51 per cent) are between 14 and 17 years of age, indicating the gravity of the cases, since most of those affected are children. One of the main places of origin of victims of trafficking for sexual exploitation purposes is Iquitos, while the cities of Lima, Arequipa, Madre de Dios and Cuzco are the main destinations.

⁹⁶ Ministerial Resolution No. 0491–2010-IN/0105.

⁹⁷ Resolution No. 589–2009-MP-FN of 28 April 2009 of the Attorney General's Office.

⁹⁸ Supreme Decree No. 013–2009-JUS, implementing regulations of Act No. 29360 on the Public Defence Service.

⁹⁹ Ministerial Resolution No. 1558–2008-MP-FN.

¹⁰⁰ Departmental Resolution No. 277–2008-DIRGEN/EMG of 28 March 2008.

of the prosecutor's offices against organized crime were also expanded to include investigation of the crime of people trafficking.

136. Peru's Constitution stipulates that work must be performed freely and voluntarily and must be remunerated.¹⁰¹ In this respect, the Peruvian State must eliminate forced labour in accordance with the international obligations assumed in the relevant ILO Conventions.¹⁰² To this end, the Ministry of Labour and Employment Promotion has created the National Commission against Forced Labour¹⁰³ as the coordinating body for policies and actions aimed at abolishing this problem in the country.¹⁰⁴ The Commission's members are drawn from the public and private sectors, with representatives of workers' and employers' organizations, and it also receives support from ILO.

137. A National Plan to Combat Forced Labour¹⁰⁵ has been adopted, which constitutes the national strategy for combating forced labour. It takes a comprehensive rights approach based on the State's duty actively to protect and promote the exercise of fundamental rights.

138. The main preventive actions prioritized by the Commission include training sessions, seminars, workshops and information events organized by various State institutions under component II of the Plan, which is based on education, communication and awareness-raising (aimed at employers, workers, public officials and the general public), above all in places where the incidence of forced labour is greatest. Communication strategies are used to strengthen and empower affected groups by giving them access to information (see annex 14). Two free nationwide telephone services have been created, through the Ministry of the Interior and the Ministry of Women and Social Development, to provide counselling and specialized guidance to members of the public. A Special Labour Inspection Group (GEIT)¹⁰⁶ has also been set up to conduct official investigations into the existence of forced labour in the country. The Group launched the first phase of investigatory work into timber extraction in the Loreto region, but was unable to complete the second phase for lack of budgetary resources.¹⁰⁷ Under component V of the Plan, on social development, strengthening and participation, the Ministry of Labour set up a working group in 2009 to design a strategy for incorporating a fundamental rights component in employment and small and microbusiness programmes (see annexes 15 and 16).

¹⁰¹ Article 2 (15), article 23 and article 24, respectively. Likewise, the single ordered text of Legislative Decree No. 728 adopted by Supreme Decree No. 003-97-TR (articles 4 and 6 on the voluntary nature of hiring and the right to remuneration). Article 168 (2) of the Criminal Code criminalizes the infringement of freedom of employment.

¹⁰² The Peruvian State ratified ILO Convention No. 29 concerning Forced or Compulsory Labour (1930) and ILO Convention No. 105 concerning the Abolition of Forced Labour (1957) on 1 February 1960 and 6 December 1960 respectively.

¹⁰³ Supreme Decree No. 001-2007-TR of 13 January 2007. Available at www.mintra.gob.pe/trabajo_forzoso, accessed on 28 March 2011.

¹⁰⁴ It should be noted that the Ministry of Labour has created the Directorate of Fundamental Labour Rights and Occupational Safety and Health, the line agency responsible for formulating public policy and substantive action aimed at promoting freedom of association, the eradication of forced labour and child labour, equal opportunities and other rights. The Directorate is also responsible for providing the Commission's technical secretariat through the Department for the Promotion and Protection of Fundamental Labour Rights.

¹⁰⁵ Supreme Decree No. 009-2007-TR of 3 May 2007.

¹⁰⁶ Departmental Resolution No. 085-2008-MTPE/2/11.4.

¹⁰⁷ In the first phase, it was concluded that the system of employment training or induction (which involves workers' subordination to the debt mechanism) persists as a form of manpower recruitment and is widespread in Loreto and in the timber extraction industry, being a common practice among mestizo and indigenous populations.

139. The labour relations of domestic employees¹⁰⁸ have also been regulated, establishing the rights and duties of workers and employers (see annex 17).

Article 9

140. In Peru, when the necessary action is taken to guarantee respect for human rights in cases of deprivation of liberty and security of person, the constitutional requirement applies that no one may be detained except on a written, substantiated judicial warrant or by the police in cases of *flagrante delicto* and that the detainee must be placed at the disposal of the corresponding court within 24 hours or within the time allowed for his appearance.¹⁰⁹ This is supplemented by the constitutional requirement that no form of restriction on personal liberty shall be allowed except in the cases provided by law.¹¹⁰ This requirement is mandatory for the police,¹¹¹ who must inform the Public Prosecutor's Office, which conducts the investigation from the outset.

141. To this end, the Peruvian State established in the 1991 Code of Criminal Procedure the situations in which a person may be detained on the order of a judge: preliminary judicial detention,¹¹² pretrial detention,¹¹³ preventive internment in a psychiatric centre¹¹⁴ and prohibition on leaving the country.¹¹⁵

142. There is also citizen's arrest,¹¹⁶ whereby anyone may arrest a person in *flagrante delicto*, in which case he must immediately hand over the person and the items constituting the *corpus delicti* to the nearest police station.

143. Peru condemns cases in which a person is detained in situations others than those envisaged by the Constitution and the law, whether by an authority, a public official or a civilian. Such detentions are arbitrary and protection is provided against them by judicial mechanisms such as habeas corpus, without prejudice to any investigations, penalties and reparations instituted by the State through the competent organs.¹¹⁷

144. The Peruvian State likewise recognizes the importance of establishing guidelines for the monitoring of police custody in the legal situations described above. That is why the Attorney General's Office¹¹⁸ adopted operational guidelines for prosecutors pursuant to articles 205 to 210 of the 1991 Code of Criminal Procedure.

145. In this connection, the Ombudsman's Office¹¹⁹ has adopted a standardized record for detainees in police units, which is used by its representatives on their visits to police units.

¹⁰⁸ Act No. 27986 on domestic employees and its implementing regulations, Supreme Decree No. 015-2003-TR.

¹⁰⁹ Constitution of Peru, art. 2 (24) (f).

¹¹⁰ *Ibid.* art. 2 (24) (b).

¹¹¹ *Ibid.* art. 159 (4).

¹¹² Code of Criminal Procedure, art. 261.

¹¹³ *Ibid.* arts. 268 to 285.

¹¹⁴ *Ibid.* arts. 293 and 294.

¹¹⁵ *Ibid.* arts. 295 and 296.

¹¹⁶ Citizen's arrest came into force on 14 May 2009.

¹¹⁷ Competent organs such as: the investigation and internal oversight mechanisms of the armed forces and police, the system of military and police justice, the Ombudsman's Office, congressional investigative committees, the Attorney General's Office and the judiciary.

¹¹⁸ By Resolution No. 029-2005-MP-FN of 8 January 2005.

¹¹⁹ Resolution No. 24/DP-99 of the Ombudsman's Office of 11 June 1999.

146. Police procedures and mechanisms have been established for members of the police to be trained in the application of human rights, so as to ensure that they apply human rights in performing their duties and that the fundamental rights of persons (civilians and police) are respected in the management, organization and execution of operations to control, maintain and restore law and order.

147. The Act on the police disciplinary rules¹²⁰ also establishes norms and procedures intended to prevent, regulate and punish breaches committed by police personnel in the performance of their duties, including abuse of their functions and powers, violations of liberty and security of person and wilful participation in serious crimes against life and liberty.

148. The free national hotline is the channel for reporting professional misconduct and human rights violations committed by public officials and personnel under the authority of the Ministry of the Interior. In the period 2008–2010, 266 reports and 892 complaints were handled and information was provided in 1,326 cases.

149. There is no record of complaints or compensation in cases of wrongful arrest, although there are guidelines on the measures that criminal or mixed courts must take into account when issuing arrest warrants in cases where more than one person has the same name.

150. The Ombudsman's Office has produced two reports on the subject, the first detailing wrongful arrests as a result of more than one person having the same name¹²¹ and the second concerning arbitrary arrests as a result of failure to identify the suspect correctly.¹²² In cases where more than one person has the same name, guidelines have been issued on the measures and procedures to be taken into account by judicial personnel.¹²³

151. There is currently no registration system whereby immediate notice can be given of a person's detention in a psychiatric hospital.

152. The residential care centres of the Comprehensive Family Welfare Programme (INABIF) provide all-round care to children and adolescents referred to them by the family courts or the child protection unit and design individualized intervention strategies for minors, offering them emotional and social support. Once the intervention stage is over, they work to strengthen interpersonal relations within the family with a view to the minor's reintegration in the family or in society.

153. Article 209 (1) of the Constitution establishes that individual liberty and related rights are protected by habeas corpus. Article 25, *in fine*, states that habeas corpus may also be used to protect constitutional rights related to the right to personal liberty.

¹²⁰ Act No. 29356 of 12 May 2009.

¹²¹ Ombudsman's report No. 118–2007-DP/ADHPD "Violation of the rights to personal liberty and identity by unlawful arrest warrants".

¹²² Ombudsman's report No. 010–2009-DP/ADHPD "Arbitrary arrests and State responsibility: a case study".

¹²³ Supreme Decree No. 008–2004-IN giving the police the power to send back to the corresponding judicial body arrest warrants or detention orders that do not contain the correct identity details of the person to be arrested, so that they can be clarified. General Directive No. 003–2004-IN-PNP adopting operational procedures for the full identification of persons subject to police intervention or investigation. Administrative Resolution No. 081–2004-CE-PJ adopting Directive No. 003–2004-CE-PJ "Measures to be taken into account by criminal or mixed judges when issuing an arrest warrant in order to avoid cases where more than one person has the same name". Resolution No. 1545–2006-MP-FN of the Attorney General's Office adopting Directive No. 012–2006-MP-FN. Provisions on identification of persons, arrest warrants and searches.

154. The Constitutional Court has emphasized repeatedly in its case law that the right of defence strictly means the right not to be left undefended at any stage of criminal proceedings. Thus, this right is doubly protected: materially, in that the accused or the defendant has the right to conduct his own defence from the moment when he is informed of the charges against him or of the judicial decision allegedly harmful to him as a result of procedural irregularities or sentencing errors; and formally, in that he has the right to a learned defence, in other words, to the advice and support of a defence lawyer throughout the trial, which also means the right to be notified of all the measures taken within a trial.

155. With regard to detention, the detained person must be informed immediately and in writing of the reasons for his detention and has the right to communicate personally with counsel of his choosing and to be assisted by such counsel as soon as he is summoned or arrested by any authority. If the detainee speaks a language other than Spanish, he has the right to use his own language before any authority with the assistance of an interpreter. Foreigners have this same right when they are summoned by any authority.¹²⁴

156. A detainee has the right not to be subjected to coercion, intimidation or measures contrary to his dignity, to techniques or methods affecting or undermining his free will or to a restriction not authorized or permitted by law.

157. Every detainee has the right to be examined by a forensic doctor or, failing that, another health professional when his state of health so requires.

158. Official police custody and preliminary detention may last only 24 hours and no longer than 15 days respectively, in cases involving the crimes of terrorism, espionage and illicit drug trafficking. In such cases, the criminal judge has special powers to visit, at the detainee's request, the place where the detainee is being held and to verify the reasons for the deprivation of liberty, the progress of the investigations and the detainee's state of health.

159. At the end of police custody, the prosecutor decides whether to order the detainee's release or to request his pretrial detention or other alternative measure, informing the examining judge that investigations are continuing.

160. The criminal judge may order an immediate medical examination of the detainee within the time allowed for his appearance, provided that the prosecutor has not already done so and without prejudice to authorizing his examination by a private physician at any time. He may also authorize the detainee's transfer from one place to another in the country, once medical examinations have been conducted and subject to a substantiated request from the prosecutor.

161. If the prosecutor requests the accused's pretrial detention, preliminary detention lasts until a hearing has been held within 48 hours.

162. If a person is detained for the crimes of terrorism, espionage or illicit drug trafficking or for a crime punishable by more than six years' imprisonment, the prosecutor may request the examining judge to order that he be held incommunicado, provided that this is essential for uncovering the facts under investigation and does not last for more than 10 days. This does preclude the detainee from having private conferences with his defence lawyer, which do not require prior authorization and cannot be prohibited.

163. Pretrial detention may not exceed nine months or, in complex cases, 18 months.

164. The judiciary has plaintiffs offices or general distribution centres in every judicial district in the country, to which citizens can go to obtain updated information on trials. The National Prison Institute transmits information on persons deprived of their liberty monthly

¹²⁴ Constitution of Peru, art. 2 (19).

to the National Registry of Detainees and Persons Sentenced to Imprisonment (Public Prosecutor's Office) through the Prison Registration Department. Such information can be consulted by and is accessible to all interested parties.

Article 10

165. The framework domestic legislation regulating the treatment of all persons deprived of their liberty is the Code of Criminal Enforcement¹²⁵ and its implementing regulations.¹²⁶ Both of these regulate all aspects of the treatment of persons deprived of their liberty, their guiding principle being respect for such persons' fundamental rights and for their inherent dignity as human beings. In addition to these norms, however, there are a whole set of norms that include the prison service human rights handbook, which applies human rights principles to the prison service. The handbook's use is mandatory for all Prison Institute officials and staff.

166. One specific measure taken by the competent authorities to monitor the effective applications of norms governing the treatment of persons deprived of their liberty is the regular visits¹²⁷ provided for in article VI of the preliminary title of the Criminal Code and article 95 (8) of the Act organizing the Public Prosecutor's Office. Both legislative mandates establish that provincial criminal judges and prosecutors must monitor and visit prison establishments in order to see how detainees are being treated. In addition to these regular visits there are those made by representatives of the Ombudsman's Office, who not only verify how detainees are being treated but also receive complaints from them about their treatment.¹²⁸

167. Impartial supervision and independent inspections in prison establishments are ensured through the regular visits made by independent bodies such as the Public Prosecutor's Office and the Ombudsman's Office, which also help to inform inmates about their rights.

168. The National Prison Treatment Plan¹²⁹ was formulated in a context in which the prison problem presents a challenge to a country like Peru. Its aim was to assess the real situation in Peru's prison system and to design and implement short-, medium- and long-term policies with regard to prison treatment, security and administration. Its strategic aim is to ensure comprehensive treatment of inmates and persons sentenced to prison terms with a view to their reintegration in society, in a context of respect of human rights. In an attempt to find solutions to the prison problem, the State also adopted by Ministerial Resolution No. 419-2007-JUS a new prison policy document outlining the main elements of a prison reform process based on new projects and actions. Although the implementation of both the Plan and the policy document has been gradual and has helped improve prison conditions, it presents a challenge that the State must take up in coordination with the different sectors involved in the issue. Related action is being taken on specific aspects of the situation, however.

169. For instance, gradual progress is being made in reducing prison overcrowding through the construction and remodelling of prison complexes, such as the building of

¹²⁵ Legislative Decree No. 654—Code of Criminal Enforcement.

¹²⁶ Supreme Decree No. 015-2003-JUS—Implementing regulations of the Code of Criminal Enforcement.

¹²⁷ These visits fulfil a monitoring role, in that they verify compliance with the relevant norms.

¹²⁸ From the outset, it has been the institutional practice of the Ombudsman's Office to produce regular reports on the situation of the prison system.

¹²⁹ Adopted in 2003 by the Ministry of Justice.

Ancón closed prison with a capacity of 1,000 inmates (December 2004) and the remodelling of Virgen de Fátima prison (December 2004).

170. New wings have been built at a number of prisons in the cities of Ica, Huacho, Huaraz, Chiclayo, Trujillo and Cañete, among others, in order to house more inmates. In 2010, work was completed on the building of Ancón II prison, with a capacity of 2,000 inmates. The Chinchá, Huaral II and Tarapota prisons are also under construction and there are plans to rehabilitate and increase the capacity of Yurimaguas prison. Other plans include the building of new prisons at Rio Negro (Satipo), Huanta (Ayacucho) and Shumba (Jaén), expansion of the capacity of Chimbote prison, expansion and remodelling of Tacna prison—phase I, the building of kitchen and workshop areas at Trujillo prison, the rehabilitation and comprehensive expansion of Pucallpa prison and the rehabilitation of basic services at Cajamarca prison.

171. Another measure that is helping to reduce prison overcrowding is the commutation of penalties for nationals and foreigners, the granting of presidential pardons and the granting of ordinary and humanitarian pardons. A total of 3,532 presidential pardons were granted in the period 2006–2009. An electronic tagging system is also being implemented for inmates accused and convicted of less serious crimes.

172. The reform of criminal procedure in Peru began in July 2006 with the entry into force of the new Code of Criminal Procedure in the Huara judicial district, as part of a gradual process of implementation. The new Code operates according to a different logic from the 1940 Code, namely, more rational use of pretrial detention as a precautionary measure depriving the accused of his liberty during the course of criminal proceedings. Thus, one of the goals of the new Code is to use pretrial detention only in exceptional cases where it is strictly necessary.¹³⁰ This would make it possible to put an end to the critical situation in the country's prisons, where most inmates are still awaiting sentencing. All this clearly guarantees any citizen accused of a crime that his right to personal liberty will be restricted only in the exceptional circumstances established by article 268 of the new Code of Criminal Procedure, thereby putting an end to the excessive use of pretrial detention that was customary in Peru.

173. With regard to the access of persons deprived of their liberty to medical professionals, efforts have been made in recent years to improve health-care coverage for persons deprived of their liberty. Despite these efforts, however, real needs are still not being covered. Accordingly, four programmes have been implemented with support from the Ministry of Health and in coordination with the National Prison Institute: (a) national health strategy for tuberculosis (TB) prevention and control; (b) health strategy and control of sexually transmitted diseases (STDs) and human immunodeficiency virus (HIV); child growth and development strategy; and (d) child immunization. Under the four programmes, medicines are provided to the target population. Support is also being provided by the Global Fund to Fight AIDS, Tuberculosis and Malaria, which has two programmes: Round 4 on STD and HIV management and Round 6 on improving regional health coordination.

174. It is important to mention the construction and operation of a clinic for psychiatric inmates with TB and HIV in Lurigancho prison and the building of clinics in the Ica and Puerto Maldonado prisons, thanks to Global Fund cooperation. On the other hand, comprehensive health insurance (SIS) for persons deprived of their liberty only covers emergency situations, pregnant women and children, not the entire prison population.

¹³⁰ According to the report produced in La Libertad judicial district, "*La Reforma Procesal Penal en Peru: Una Nueva Visión de Justicia 2007–2009*" (Peru, 2010, p. 99), in 2009 the criminal prosecutor ordered pretrial detention in only 10.4 per cent of all criminal cases in which a formal preparatory investigation was conducted.

175. With regard to access to public defenders,¹³¹ public defence offices have been set up in the country's main prisons to provide free legal advice to unconvicted and convicted inmates. To date, there are 53 public defenders performing this task, most of whom are assigned to prisons in Lima, where the bulk of the area's prison population is concentrated. Obviously, this number is very small, but the State is aiming to improve coverage in view of the large number of prisoners. In addition to the number of public defenders assigned specifically to prisons, other public defenders working in free legal aid (ALEGRA) offices,¹³² justice centres and grass-roots legal clinics in the different judicial districts also offer legal advice in criminal trials against persons deprived of their liberty when the judicial authorities or the Public Prosecutor's Office, or defendants themselves, so request.

176. The future creation and implementation of the national preventive mechanism envisaged in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment would be a major step forward, given its preventive nature and the recommendations that it would make to the State for improving the treatment of all those deprived of their liberty, including prison inmates. The National Human Rights Council has drafted a bill on the creation of the national preventive mechanism, which is currently the subject of inter-ministerial consultations.

177. Article 11 of the implementing regulations of the Code of Criminal Enforcement establishes the rights to which anyone deprived of his liberty is entitled, which include, during his time in prison, the mechanisms of consulting and formulating complaints and/or demands to the prison management on aspects affecting his rights, needs or conditions of detention. The prison management in turn channels his complaint to the Public Prosecutor's Office, the Ombudsman's Office or other organizations for the defence of human rights. There is also a free hotline to the Public Prosecutor's Office and the Ombudsman's Office on which people can make their complaints, and inmates themselves can use this mechanism since there are telephone services within prisons.

178. With respect to the instruction and training of prison personnel, the Prison Institute has included in its CENECP curriculum the teaching of unrestricted respect for human rights, the prohibition of any act of torture or use of force, anger management, etc., imparting human rights education not just as a separate course but also as part of the overall training of students who will become prison officers. The same is true of refresher and retraining courses. It is important to mention that the first course for prison officers on human rights in the prison service was held from 1 to 31 March 2010. Taught by professionals from the Ombudsman's Office, the International Committee of the Red Cross (ICRC) and the Human Rights Commission (COMISEDH), participants earned the qualification of "human rights instructor".

179. An agreement is currently in force between INPE and COMISEDH for the training of prison officers to ensure that, in performing their duties, they are not involved in human rights violations and above all to avoid any act of torture.

180. Concerning the treatment of children and adolescents deprived of their liberty, the Children and Adolescents Code establishes that, in the event of a breach of criminal law, a child or an adolescent under the age of 14 shall be subject to protective measures and an adolescent aged between 14 and 18 shall be subject to socio-educational measures. The entity that supervises the treatment of minors is the judiciary, through juvenile centres that apply resocialization measures but not prison measures, the main institutional objective and social

¹³¹ Public defenders provide legal advice and support to persons under investigation and persons denounced, detained, accused, indicted or convicted in criminal trials, including juvenile offenders, with limited economic resources.

¹³² Free legal aid provided by the Ministry of Justice.

commitment being to rehabilitate juvenile offenders and thus permit their effective social reintegration. This system of treatment is known as the system for the social reintegration of juvenile offenders,¹³³ enshrined in a specialized legal document on the treatment of juvenile offenders and consisting of a series of primarily educational programmes, methods, techniques and instruments in keeping with laws and norms compatible with human rights. Lack of financial resources has prevented the creation of more juvenile centres, a situation highlighted by the Ombudsman's Office in its report No. 123 on the "Situation of juvenile offenders deprived of their liberty" and which the State hopes to remedy.

181. Concerning conditions of detention for minors, minors are separated from adults and placed in juvenile centres for adolescents. Measures and conditions of deprivation of liberty are applied according to the principle of the best interests of the child, international norms and the Children and Adolescents Code, which set forth the rights of minors deprived of their liberty. It is also important to mention that there are various kinds of services for detained minors, such as education and occupational training, social and recreational activities, health care, freedom to practise their religion, family contact, free official defence services, processing of personal documents, legal advice, psychological and social support and the provision of complete sets of clothing and toiletries.

182. With regard to the implementation of United Nations instruments, while the Code of Criminal Enforcement states that the prison system welcomes United Nations provisions, conclusions and recommendations for the prevention of crime and the treatment of offenders, the prison service human rights handbook itself incorporates the international instruments containing a body of rules and principles to guide prison service actions.¹³⁴ The incorporation of those instruments into domestic law and the training given to prison personnel to familiarize them with those instruments serve to guarantee respect for the human rights of persons deprived of their liberty. For this reason, a commission has been set up¹³⁵ to revise the general security rules of the National Prison Institute and adapt them to the prison service human rights handbook.

183. The Code of Criminal Enforcement establishes disciplinary rules for inmates in order to regulate their peaceful coexistence and maintain order inside prisons. The Code defines solitary confinement as a disciplinary measure lasting a maximum of 30 days, except where the disciplinary breach is committed while a previous penalty of solitary confinement is in force, in which case its duration may be extended to a maximum of 45 days. Solitary confinement takes place in the location habitually occupied by the inmate or a location determined by the prison administration. It is used to punish an inmate who has committed a disciplinary breach and is envisaged as a penalty that, in keeping with the principle of legality, is imposed only after a disciplinary hearing in which the inmate enjoys full guarantees and may invoke the remedies of review and appeal. It is not applied to pregnant women, mothers up to six months after childbirth who have their children with them and persons aged over 60. In such cases, the Prison Board must choose another penalty. In this connection, it should be mentioned that the Ombudsman's Office, as part of its constitutional mandate, produced a leaflet on prison disciplinary procedures and

¹³³ Adopted by Administrative Resolution No. 539-CME-PJ of the judiciary of 25 November 1997.

¹³⁴ For instance, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Standard Minimum Rules for the Treatment of Prisoners; the Basic Principles for the Treatment of Prisoners; the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Code of Conduct for Law Enforcement Officials.

¹³⁵ Presidential Resolution No. 831-2010-INPE/P of the National Prison Institute.

punishment and the promotion of fair prisons (August 2010) that is distributed to both prison officers and prisoners.

184. Until now, lack of resources has prevented implementation of the system of separating unconvicted prisoners from convicted prisoners. An April 2011 statistical summary of the prison population yielded a total of 47,726 inmates, of whom 28,716 are awaiting sentencing and 19,010 have been convicted. In these circumstances, it is difficult to separate inmates according to their sentencing status, although it is recognized that this is a challenge that the State will have to take up.

185. Concerning legislative and practical measures for the rehabilitation of inmates, the Prison Institute has health, education and work programmes that, while insufficient, do go some way towards rehabilitating prisoners. Inmates also receive legal, social and psychological help. Some programmes are carried out with support from the Catholic and Evangelical Churches and from private companies that organize pottery, carpentry, tailoring and hairdressing workshops, among others.

186. The Prison Institute also has a post-prison department responsible for providing assistance to former prisoners who benefited from prison privileges or committed minor offences. Such assistance is provided by prison personnel and is designed to help former prisoners reintegrate in society. It still needs improvement, however, and a post-prison support system needs to be established for inmates who have served their sentence.

187. Concerning the conditions of detention of asylum-seekers and illegal immigrants, there is currently no place for holding or detaining foreign nationals whose immigration status has not been regularized. Responsibility for such cases rests with the Aliens Police of the Department of State Security. Its activities are regulated by the Aliens Act, which unfortunately lacks implementing regulations. However, there have been cases of foreign nationals who, for lack of money and a place to stay, have asked to remain “in the custody” of the Aliens Police voluntarily. Normally, when a foreign national’s status is found to be illegal, he is notified in order to determine his situation.

188. With a view to reducing overcrowding in the Yanamayo and Challapalca prisons, improvements have been made in the functioning of both prisons, especially Challapalca. These improvements have ensured that the prison population has the necessary services and thus that prisoners’ personal dignity is respected.

189. Yanamayo prison currently has a prison population of 329 inmates and a professional staff of psychologists, social workers, legal advisers and medical personnel. It provides work and education services for inmates and basic services such as water and electricity. The prison has a mobile unit for dealing with any emergencies. Prison visits are completely normal.

190. The Government suspended the use of Challapalca prison in 2003, acting on the recommendation of the report of the Inter-American Commission of Human Rights ordering its closure and on that of report No. 73 of March 2003 of the Ombudsman’s Office, which endorsed the recommendation. Subsequently, in 2008, the Prison Institute was forced to transfer high-risk ordinary prisoners to the prison because of the crime wave sweeping the country at the time. The prison has 97 inmates and a professional staff providing health care, legal aid and educational and occupational assistance. It also has basic services such as water and electricity.

Article 11

191. There have been no changes since the previous report.

Article 12

192. The Peruvian State recognizes the fundamental right to freedom of movement and residence, as established in the Constitution.

193. The Constitution also establishes that in states of exception (state of emergency and state of siege), the right to freedom of movement may be restricted or suspended but in no circumstances may anyone be exiled.

194. The Aliens Act adopted by Legislative Decree No. 703 of 14 November 1991 establishes norms for the entry, stay, residence, departure, re-entry and control of foreign nationals in the territory of the Republic and regulates their legal situation in Peru.

195. The Act specifies that it is applicable to the extent that it does not conflict with the international treaties and conventions to which Peru is a party and that contain provisions referring to foreign nationals. A number of amendments were made to the Act by means of Legislative Decree No. 1043 of 25 June 2008.

196. The registration of persons and the formalities applicable to foreigners to the national territory are subject to possession of a visa¹³⁶ and their immigrant category is authorized by the Immigration and Naturalization Department of the Ministry of the Interior. The relevant categories include tourist, immigrant, worker or student, but exclude immigrant categories coming within the jurisdiction of the Ministry of Foreign Affairs, such as diplomatic or consular official, political asylum-seeker or refugee (article 7 of the Aliens Act).

197. The Aliens Act establishes that any foreigner wishing to enter Peru must have a valid passport or similar travel document issued by the competent authority and containing the corresponding visa, except in the cases envisaged in articles 19 (conventions on abolition of visas), 20 (bilateral agreements for the transit of nationals of bordering countries) and 21 (consular safe conducts) of the Act or when the Ministry of Foreign Affairs so requests for immigrant categories within its jurisdiction.

198. With respect to minors, article 11 of the Children and Adolescents Code stipulates that both parents must have given notarized authorization in order for a Peruvian minor to travel outside the national territory either alone or accompanied by only one of the parents. If one of the minor's parents is dead or the minor has been recognized by only one parent, it is sufficient to have the authorization of the surviving parent or the parent who has recognized the minor, a situation that must be attested to in the authorization.

199. Outside the country, the travel authorization must be granted in a Peruvian consular office and is necessary when the minor travels to Peru on a Peruvian passport either alone or accompanied by only one of his parents or another adult. A travel authorization is not required when the child is a national of another country in addition to Peru and travels on the passport or travel document issued by the authorities of the other country of which he is a national.

200. In the particular case of political asylum and refuge, anyone claiming protection is allowed to enter the national territory, whether he does so legally or illegally. There is a procedure for determining refugee status that offers the guarantees of due process and, if

¹³⁶ Visas may be temporary or resident. A temporary visa authorizes a foreigner to enter and stay in the territory of the Republic for a renewable period of up to 90 days. A resident visa authorizes a foreigner to enter the country and reside there for a renewable period of one year. A resident visa may be granted to immigrant categories other than tourists, businessmen, businessmen travelling on an ABTC, performers, designated workers, crew members and persons in transit.

favourable, grants the person residence and the right to an alien's identity card on similar terms to any other resident alien.¹³⁷

201. The Constitution establishes as one of the fundamental rights of the person the freedom to choose one's place of residence, to move around the national territory and to enter and leave it, subject only to restrictions based on health, a judicial warrant or the Aliens Act (art. 2 (11)).

202. It also stipulates that no passenger or crew member may enter or leave the country before the immigration authority has duly inspected and verified his documentation¹³⁸ (Aliens Act, art. 27).

203. The laws regulating political asylum and refuge establish the need to request a travel authorization to leave Peruvian territory. At present, there is no case in which such travel authorization is denied.

204. Article 2 (21) of the Constitution provides the right to a nationality and that no one may be deprived of the right to obtain or renew a passport within or outside the territory of the Republic. Article 25 (10) of the Code of Constitutional Procedure likewise establishes as one of the component rights of individual liberty the right to obtain or renew a passport within or outside the Republic.

205. The Immigration and Naturalization Department also issues safe conducts to foreign nationals who for some reason do not have a passport and whose country does not have consular offices in Peru or who cannot rely on those offices for help.

206. In the case of persons who have been granted refuge or political asylum, article 75 of the Aliens Act states that the Ministry of Foreign Affairs is responsible for granting travel authorizations to them and their family members.

207. Article 55 of the Aliens Act stipulates that foreign nationals in the territory of the Republic have the same rights as Peruvians, with the exceptions established by the Constitution, the Act and other laws of the Republic.

208. In the event of a mass influx of people into Peruvian territory, the Refugee Act provides for the possibility of restricting freedom of movement in response to the need to maintain public order and national security.

209. Article 25 of the Aliens Act as amended by Legislative Decree No. 1043 of 26 June 2008 imposes an obligation on transport companies to re-embark as soon as possible, at their responsibility and expense, passengers who are not admitted to Peru because their documentation is not in order, without prejudice to the payment of a fine equivalent to one tax unit per passenger. This penalty is imposed by decision of the Immigration and Naturalization Department. Article 26 requires international passenger transport companies to present to the immigration control authorities, at the time of entry to or departure from the country of their respective means of transport, the manifests of passengers and crew members with all the data necessary for their identification.

210. In Peru, the right not to be expatriated or expelled from one's place of residence except by judicial order or pursuant to the Aliens Act is one of the component rights of

¹³⁷ The norms regulating refuge are Act No. 21891 and its implementing regulations, Supreme Decree No. 119-2003-RE. Asylum is regulated by Act No. 27840 and its implementing regulations, Supreme Decree No. 092-2005-RE.

¹³⁸ The Ministry of the Interior single administrative procedures text relating to the Immigration and Naturalization Department, adopted by Supreme Decree No. 004-2008-IN of 9 June 2008, establishes the requirements for immigration controls on the departure of Peruvian and foreign nationals.

individual liberty that may be protected by habeas corpus under article 25 (4) of the Code of Constitutional Procedure.

211. Moreover, Act No. 29460 amended the Criminal Code to abolish expatriation and all provisions related to its application.

212. The Aliens Act establishes that foreign nationals who break the law shall be subject, inter alia, to penalties such as compulsory departure, cancellation of their stay or residence and expulsion from the national territory, pursuant to articles 60 et seq. of the Act.

213. Between January 2008 and May 2010, the Immigration and Naturalization Department reported 700 cases of illegal immigration status.¹³⁹ These included individuals with a prior conviction for drug trafficking who are henceforth barred from entering Peru.

Article 13

214. The admission of foreigners to the national territory is regulated by the Aliens Act,¹⁴⁰ which establishes requirements for their entry, residence, change of immigrant category, exit visa and re-entry.

215. Thus, the Act states that all foreign nationals must be in possession of a valid passport or similar travel document issued by the competent authority in order to be able to enter Peruvian territory.¹⁴¹

216. Foreigners who are nationals of countries with which Peru has signed treaties on the subject, countries bordering Peru with which bilateral treaties on the movement of persons in border areas are in force and countries whose consular offices and sections have issued valid consular safe conducts in accordance with Peru's consular regulations are exempted from this requirement, as are cases in which the Ministry of Foreign Affairs has requested the entry of foreigners whose immigrant category comes under its jurisdiction.

217. It should be noted that no foreigner may enter the national territory without the immigration authorities having first inspected and checked his documentation.

218. Mentally ill, paralysed, blind or deaf mute persons who are unable to manage on their own may enter the country if they are accompanied or received by persons who take responsibility for them.

219. A foreigner is barred from entering the country when he has been expelled from the national territory by judicial order or pursuant to the rules governing aliens or when he is a fugitive from justice for ordinary crimes under Peruvian law.

220. The cases in which the immigration authorities can prevent the entry of foreigners to Peruvian territory are the following: they have been expelled from other countries for having committed crimes defined as ordinary crimes under Peruvian law or breaches of aliens laws similar to those in force in Peru; Peru's health authority determines that their entry to the national territory poses a threat to public health; they have criminal or police records for crimes defined as ordinary crimes under Peruvian law; they do not have the financial resources to cover the costs of their stay in the national territory; they have been charged abroad with crimes defined as ordinary crimes under Peruvian law that are

¹³⁹ Others are those with departure orders who regularize their situation by fulfilling the Department's legal requirements, recognizing their offence and paying a US\$1 fine for each day that their visa was expired. It is not the Department's function to prosecute illegal aliens with a view to their expulsion.

¹⁴⁰ Legislative Decree No. 703 of 14 November 1991.

¹⁴¹ *Ibid.* art. 22.

punishable by imprisonment or more serious penalties as reported by the competent foreign authorities; or they do not fulfil the requirements set forth in the Aliens Act.

221. Foreigners who are in the national territory must confirm their stay and residence by presenting their passport or similar travel document, alien's card or identity document issued by the competent authority, as appropriate.

222. The Ministry of Foreign Affairs is the State organ that grants political refugee or refugee status to foreigners that so request, subject to determination of their status in accordance with Peruvian law and the conventions in force. Each year, the Ministry reviews their status and the Ministry of the Interior takes appropriate steps to protect and guarantee the safety of political and other refugees in the national territory.

223. With respect to diplomatic asylum, the Asylum Act¹⁴² implementing regulations state that the foreigner must make the asylum application at Peru's diplomatic missions or the chief of mission's residence, on board Peruvian ships or aircraft or at Peruvian military camps abroad. Asylum must be granted in emergencies and for the time strictly necessary for the applicant to leave the country with the assurances granted by the government of the territorial State so that there is no risk to his life, liberty or integrity of person.

224. In the case of territorial asylum, the foreigner must make the corresponding application to the national border authorities, immigration control posts or police or military units or, where appropriate, the Ministry of Foreign Affairs. The authority concerned must record the date on which the application was made.

225. The Peruvian State may expel foreigners from the national territory once they have served a prison sentence.¹⁴³ The prison governor places the foreigner sentenced to expulsion at the disposal of the competent authority so that the sentence can be enforced.

226. As a party to the Convention relating to the Status of Refugees and its Protocol, the Peruvian State accords international protection to foreign citizens who so request in circumstances in which their life, liberty or personal integrity is threatened in their country of origin, in keeping with the principle of non-refoulement and other norms regulating refuge, the relevant decision-making bodies and the corresponding procedure and principles, as well as the protection regulated by the Latin American concept of asylum, which applies only to cases of political persecution. While article 303 of the Criminal Code establishes that foreigners who have served their sentence shall be expelled from the country and prohibited from returning, article 32 of the Refugee Act states that the only authority competent to take a decision to expel a refugee shall be the one that decides on the granting of refuge, namely, the Special Commission for Refugees¹⁴⁴ or the Refugee Review Commission in second instance.

227. The Ministry of Foreign Affairs may authorize a refugee or members of his family to leave the country temporarily without losing their right of asylum or refuge, which is suspended during their absence.

228. There are remedies against expulsion, such as precautionary measures and measures suspending a violation in *amparo* or habeas corpus proceedings. These remedies have the effect of suspending expulsion, in that they halt enforcement of the appealed decision.

¹⁴² Act No. 27840 of 12 October 2002 on asylum.

¹⁴³ Criminal Code, art. 30.

¹⁴⁴ The Special Commission is an independent, multisectoral body made up of representatives of the Ministries of Foreign Affairs and the Interior. The Commission of second instance is composed of the Deputy Ministers for Foreign Affairs, Justice and the Interior.

229. Persons threatened with expulsion have a right to be assisted by legal counsel of their own choosing or by a public defender¹⁴⁵ at all stages of the proceedings.

230. With regard to persons internally displaced as a result of the internal armed conflict, which forced them to leave their place of origin, the Ministry of Women and Social Development¹⁴⁶ has registered 40,000 family files, out of which a total of 16,562¹⁴⁷ persons (9,315 females and 7,247 males), corresponding to 10,316 family files or 25 per cent of registered families, have been confirmed as being internally displaced. Once registered and their status confirmed, internally displaced persons are incorporated into the comprehensive health insurance (SIS) system.

231. Concerning the identification of the population displaced for other reasons, the National Identification and Civil Status Registry (RENIEC) has adopted comprehensive policies that include a free procedure for obtaining a national identity document, which has been implemented nationwide on the basis of the poverty map of the National Development Cooperation Fund (FONCODES)¹⁴⁸ and the districts of the national CRECER strategy.¹⁴⁹

232. The Ministry of Health has provided 191,597 mental health-care sessions¹⁵⁰ for persons affected by the consequences of political violence in the priority regions.¹⁵¹ In 2009, under the Comprehensive Reparations Programme (PIR), the Ministry also made 5,599 comprehensive home visits and conducted 760 psychoeducational sessions and 65 campaigns.

233. In the first half of 2010, various health-related actions were taken under the PIR in the priority regions,¹⁵² involving a total of 112,550 patient sessions.

234. As of March 2011, 16,964 people recognized as victims of the 1980–2000 political violence were registered with the subsidized component of the SIS system, as recommended by the Inter-American Commission on Human Rights.

Article 14

235. Article 2 (2) of the Constitution guarantees equality before the law, while the Act organizing the judiciary¹⁵³ states that any judicial proceeding, regardless of its name or area

¹⁴⁵ This is free legal defence provided for persons of limited means and in cases where procedural laws so determine.

¹⁴⁶ Responsible for promoting, coordinating, directing, supervising and evaluating norms, policies, plans, programmes and projects for assisting and protecting internally displaced persons.

¹⁴⁷ As of January 2011.

¹⁴⁸ National programme of the Ministry of Women and Social Development, whose purpose is to promote local social and productive development, primarily through a territorial approach involving the coordinated participatory management of public and private resources, that will contribute to poverty eradication, facilitate access to basic social services and social and productive infrastructure, generate economic opportunities and promote the development of production and investment capacities in rural and urban areas under the control of regional and local governments.

¹⁴⁹ The national CRECER strategy coordinates the activities of public, private, civil society and international cooperation entities at the national, regional and local levels aimed at eradicating poverty and chronic infant and child malnutrition, using a territorial, results-based approach.

¹⁵⁰ Care sessions provided in 2009, showing an increase of 30.2 per cent over 2008.

¹⁵¹ The priority regions are Apurímac I, Apurímac II, Ayacucho, Cuzco, Huancavelica, Huánuco, Junín, Pasco, Puno and San Martín.

¹⁵² Which also included the regions of Ancash, Cajamarca and La Libertad.

¹⁵³ Article 6 of the single unified text of the Act organizing the judiciary, adopted by Supreme Decree No. 017–93-JUS.

of specialization, must be based on the procedural principles of legality, right of appeal against irregularities, concentration, speed, preclusion, equality of the parties, orality and procedural economy, within the limits of the applicable laws. Under this premise, the same organ may not arbitrarily alter the meaning of its decisions in substantially equal cases.¹⁵⁴

236. The Ministry of Justice, as part of its function of promoting the prompt and effective administration of justice,¹⁵⁵ seeks to ensure that disputes are settled through alternative means of conflict resolution.¹⁵⁶

237. At present, it is necessary to exhaust attempts at conciliation¹⁵⁷ before lodging a judicial application under civil law.¹⁵⁸ The Department of Extrajudicial Conciliation and Alternative Means of Conflict Resolution (DCMA) is responsible for developing and implementing extrajudicial conciliation nationwide.¹⁵⁹ As of 2010, there were a total of 26,660 conciliators throughout the country and 625 private conciliation centres, 454 of them in Lima, as well as 77 Ministry of Justice free conciliation centres, 28 of them in Lima and Callao (see annex 18).

238. The Ministry of Justice is responsible for creating and promoting mechanisms that encourage the expansion of arbitration. To this end, it established the popular arbitration programme¹⁶⁰ designed to extend the use of arbitration to all sectors of society, setting up the *Arbitra Peru* popular arbitration centre¹⁶¹ as a means of achieving this.

239. The Ministry has also set up defence services for persons subject to judicial proceedings¹⁶² in Lima, Lima Norte and Callao in order to receive complaints lodged by citizens against the Public Prosecutor's Office or the judiciary concerning delays, omissions or irregularities in the conduct of their cases. The defence services transmit such complaints to the corresponding authorities for resolution.¹⁶³

240. The ALEGRA¹⁶⁴ free legal aid service was set up to inform people about their civil and political rights, answer legal queries and provide legal representation and support for

¹⁵⁴ On the principle of equality, see the Constitutional Court ruling in Case No. 0048–2004–AI/TC.

¹⁵⁵ Decree-Law No. 25993, Act organizing the justice sector, art. 5.

¹⁵⁶ The 28th State policy of the National Accord stipulates the full validity of the Constitution, human rights, access to justice and judicial independence in order to promote an efficient, transparent and decentralized State, guaranteeing universal access to justice and disseminating conciliation, mediation, arbitration and alternative conflict-resolution mechanisms in general.

¹⁵⁷ Normative framework of extrajudicial conciliation: Extrajudicial Conciliation Act No. 26872, as amended by Legislative Decree No. 1070, and its implementing regulations as adopted by Supreme Decree No. 014–2008–JUS, amended by Supreme Decree No. 006–2010–JUS.

¹⁵⁸ In the Lima, Callao, Trujillo, Arequipa, Piura, Huancayo and El Santa conciliation districts, as well as in Cañete and Huaura. This situation is extended to at least three conciliation districts per year. Supreme Decree No. 005–2010–JUS.

¹⁵⁹ Mention should be made of Act No. 28494 on fiscal conciliation in matters of family law, under which the provincial family prosecutor is empowered to act as a conciliator in family matters, on the issues and the terms established in the Act.

¹⁶⁰ Supreme Decree No. 016–2008–JUS.

¹⁶¹ To date, the *Arbitra Peru* popular arbitration centre has settled nearly 40 cases, organized 36 information events on arbitration, comprising seminars, conferences and campaigns, trained over 7,033 people and answered more than 673 queries.

¹⁶² Created by Ministerial Resolution No. 0522–2008–JUS and restored by Ministerial Resolution No. 0246–2010–JUS.

¹⁶³ In the period from November 2010 to February 2011, 136 complaints were handled, of which 48 were resolved.

¹⁶⁴ Art. 139 (16) of the Code of Criminal Procedure and Ministerial Resolution No. 323–2004–JUS.

persons requesting its services, thereby bringing justice services within reach of the population.¹⁶⁵

241. Concerning the right of persons to a public hearing with due guarantees before a competent, independent and impartial court, the State guarantees judges (art. 146 of the Constitution): (1) independence, in that they are subject only to the Constitution and the law; (2) a stable position, in that they cannot be transferred without their consent; and (3) job security, as long as their conduct is appropriate to and in keeping with their position.

242. With respect to the independence of judges and magistrates, it should be mentioned that in response to the Committee's concluding observations (paragraph 10), the Executive Commission of the Judiciary was disbanded by Act No. 27367 abolishing the Executive Commissions of the Judiciary and the Public Prosecutor's Office and establishing the Transitional Council of the Judiciary and the Transitional Council of the Public Prosecutor's Office.

243. Moreover, a Judicial Career Act has been promulgated, regulating the conditions for the entry, departure and evaluation of judges in the judiciary. The National Council of the Judiciary (CNM) is responsible for appointing judges by order of merit (1991 Code of Criminal Procedure, articles 150 and 154 (1) and Act No. 26397 organizing the National Council of the Judiciary, art. 2), while the judiciary is responsible for assigning judges to specific posts based on their area of expertise.

244. The Judicial Career Act, in keeping with the Constitution (art. 151), gives the Judicial Training School (AMAG) responsibility for promotions, in that the School is responsible for providing training and advanced training programmes with a view to promotion (art. 27 (4)). Penalties are imposed by CNM or the organs constitutionally and legally responsible for oversight of the judiciary. A judge's appointment may be terminated on the grounds established in article 107 of the Judicial Career Act (annex 19).

245. There are no grounds for dismissal for "corruption", but corruption-related acts arising from breaches of obligations have been punished by removal from office. According to the National Council of the Judiciary, there were 14 such cases during the reporting period.¹⁶⁶

246. CNM is responsible for approving the appointment of judges and magistrates (Constitution, arts 150 and 154 (1) and Act No. 26397 organizing CNM, art. 13). With the entry into force of the Code of Constitutional Procedure, the Constitutional Court made it mandatory for CNM to justify its appointment decisions in the Alvarez Guillén case for subsequent cases (CC ruling No. 3361–2004-AA). Later, in the Juan de Dios Lara case, a new precedent was established with regard to the need to justify CNM decisions on the dismissal and appointment of judges and magistrates, regardless of when they were taken (CC ruling No. 1412–2007-PA).

247. Since the promulgation of the Judicial Career Act, a total of 77 women have been appointed to the judiciary and 195 women have been appointed to serve in the Public Prosecutor's Office. As of 2011, the judiciary has 488 female judges and the Public Prosecutor's Office has 696 female prosecutors.

248. As the Committee notes, one important aspect of the impartiality of a trial is that it should be conducted without undue delay. To this end, the judiciary adopted a national plan

¹⁶⁵ As of February 2011, there were 28 ALEGRA centres nationwide, providing extrajudicial conciliation services, popular legal advisory services, public defence services and a free hotline.

¹⁶⁶ CNM communication to the CNDH Secretariat. Report No. 003–2011-JRR-GAT-CNM.

to clear the backlog of judicial proceedings, which has succeeded, inter alia, in settling 66,028 cases heard by 156 transitional judicial bodies.¹⁶⁷

249. The promulgation and entry into force of the new Code of Criminal Procedure¹⁶⁸ introduced a system of criminal procedure in Peru that guarantees human rights in accordance with the Constitution and international law, overcoming the deficiencies of the criminal procedural law enshrined in the 1940 Code, which tended to adopt an inquisitorial approach. Under the 1940 Code, summary proceedings (which did not include a trial phase and entrusted the same judge with investigating and trying a case) were conducted in 90 per cent of cases.

250. The new Code establishes an accusatory criminal procedural model in which functions are clearly demarcated, with the Public Prosecutor's Office being responsible for investigations and the judiciary responsible for trials. The various stages can be summed up as follows: pretrial investigation (in which the accusations are investigated), intermediate stage (in which the accused is acquitted or charged) and trial (in which the arguments are heard, evidence is presented, final allegations are made and sentence is passed). The current model is also governed by the adversarial principle, in that it encourages the exercise of various principles of trial law, such as the requirement that both sides be present and heard at the trial, that trials should be public, that cases may be appealed before a court of second instance, that all parties are equal, that the right to defence counsel is inviolable, that evidence must be legitimate and that measures to restrict the law must be lawful (see annex 20).

251. In judicial districts where the new Code has entered into force, 92 per cent of cases brought to trial by the prosecution end in convictions.

252. The 1940 Code of Criminal Procedure remains in force in 14 judicial districts,¹⁶⁹ while the new Code is being implemented gradually in Peru's different judicial districts. As of 2010, the new Code had entered into force in 16 of the country's 30 judicial districts (see annex 21).

253. The implementation of the new Code has definitely brought innovations and benefits for the functioning of ordinary criminal justice (see annex 22), such as the length of trials (between approximately eight and 14 months), the number of cases handled (78 per cent of cases compared with 40 per cent under the earlier Code) and the proportion of the prison population that have been sentenced (59 per cent).

254. The Military and Police Court is a court independent of the judiciary by express mandate of the Constitution (art. 139), which also regulates its area of jurisdiction (art. 173), establishing that its sole and exclusive aim is to administer military and police justice in cases where members of the armed forces or the police breach the rules regulating their functions. Under the Constitution and the laws in force (Act No. 29182 on the organization and functions of the Military and Police Court, as amended by Legislative Decree No. 1096), neither civilians nor members of the armed forces may be tried by this court for ordinary crimes or crimes against humanity.

¹⁶⁷ Under this plan, which covers 30 of the country's judicial districts, the functioning of various transitional judicial bodies was extended and a judicial system of electronic notifications, a register of ongoing cases, technological innovations in courts, web-based consultation of judicial files, innovative technological programmes in the Supreme Court and a project for clearing the backlog of judicial proceedings were introduced.

¹⁶⁸ Adopted by Legislative Decree No. 957 and published on 22 July 2004.

¹⁶⁹ Articles 1 and 2 of the third provision of the new Code amend and repeal the 1940 Code (and provisions expanding or amending it) and the 1991 Code (and provisions expanding and amending it). The application of the new Code is governed by articles 1 and 2 of the first supplementary and final provision, which provides for it to enter into force gradually.

255. Following the ruling of the Constitutional Court in case No. 010–2002-AI/TC, all proceedings brought against civilians for the crime of treason were declared null and void, a situation regulated by Legislative Decree No. 922. Currently, no trials for ordinary crimes are being heard by the Military and Police Court or vice versa.

256. As a result of Constitutional Court rulings on complaints that military courts are unconstitutional, new legislation has been enacted concerning both the organization of the Military and Police Court (Act No. 29182 on the organization and functions of the Military and Police Court, as amended by Legislative Decree No. 1096) and the Military and Police Criminal Code (Legislative Decree No. 1094, some aspects of which are deemed unconstitutional by civil society).

257. Under the Children and Adolescents Code,¹⁷⁰ only adolescents between the ages of 14 and 18 may be tried and sentenced for committing a criminal offence. Children under 14 are not considered liable to prosecution. Article IV of the Code's preliminary title states that insofar as the legal consequences of breaching a norm of criminal law are concerned, children and adolescents under 14 shall be subject to protective measures and adolescents over 14 shall be subject to socio-educational measures. It is important to note that Administrative Resolution No. 081–2001-PJ reminded family court judges that preventive detention of juvenile offenders must be an exceptional measure of last resort. The procedural guarantees afforded to juvenile offenders are also governed by the Constitution, the Convention on the Rights of the Child, the Children and Adolescents Code and the relevant laws (in this case, art. VII of the preliminary title of the new Code of Criminal Procedure)¹⁷¹ (see annex 23).

258. If an adolescent commits a crime, the police may arrest him either in *flagrante delicto* or on the order of a judge. Where appropriate, the police may entrust custody of the adolescent to his parents or those responsible for him, provided that the offence is not serious, his domicile has been verified and his parents or those responsible for him undertake to bring him before the prosecutor when notified to that effect. If the parents cannot be found or the crime involved violence or serious threats, the adolescent is brought directly before the family prosecutor. Juvenile offenders may be tried, in closed proceedings, only for an act or omission that constituted an offence punishable under criminal law at the time when it was committed and only the socio-educational measures established in the Children and Adolescents Code may be applied to them.

259. Peru's Constitution grants legal existence and legal capacity to peasant and native communities (art. 89). More specifically, article 149 establishes that authorities of peasant and native communities, assisted by peasant patrols, may perform judicial functions, within their territory and according to customary law, without violating the fundamental rights of the person.

260. Act No. 27908 on peasant patrols¹⁷² grants legal status to peasant patrols and their work of maintaining security and peace within their territories, establishing conflict resolution mechanisms and directing extrajudicial conciliation in accordance with the law, as well as supporting the judicial functions of peasant communities. Supreme Decree No. 025–2003-JUS, containing the implementing regulations of the Act on peasant patrols, defines and institutionalizes such patrols. It is important to emphasize the value of the fifth

¹⁷⁰ Act No. 27337, as amended by Legislative Decree No. 990.

¹⁷¹ It is important to note the CC ruling in Case No. 3427–2008-HC/TC, which established that the adolescent is a subject of law and also of obligations. However, the system of juvenile criminal responsibility must abide by certain parameters that respect the principles of the best interests of the child and other principles of human rights such as due process.

¹⁷² Published on 7 January 2003.

judicial plenary meeting of the permanent and transitional criminal divisions of the Supreme Court (Plenary Agreement No. 1–2009/CJ-116), which analysed the relationship between peasant patrols and criminal law, based on the constitutional parameters of recognition of special communal jurisdiction (see annex 24).

261. A new Act on Employment Proceedings, Act No. 29497, has also been promulgated, containing a number of provisions and principles that seek to regulate the conduct of employment proceedings, making them faster and more accessible, with emphasis on the protection of vulnerable workers. The Act gives pregnant women, disabled persons and working minors the right to public defence services.

262. With regard to the organization of the judiciary, between 2000 and 2010, 557 new non-State courts of the peace were created, bringing the total number of such courts nationwide to 5,632. Ancash and Junín are the departments with the greatest number of non-State courts, with 469 and 471 respectively

Article 15.

263. There have been no changes since the previous report.

Article 16.

264. The Constitutional Court has identified the right to recognition as a person before the law as a right not expressly enumerated in the Constitution but set forth in both the Covenant and the American Convention on Human Rights. The Court argues that since the treaties concluded by the Peruvian State and currently in force form part of domestic law, they constitute valid, effective laws and are therefore applicable with immediate effect.

265. In its ruling in Case No. 02432–2007-PHC/TC, the Court emphasizes that the issuance of a national identity document has an impact on the right to recognition as a person before the law, in that an identity document enables the individual to exercise other inherent fundamental rights.

266. In Peru, there is a problem of under-registration of persons, which the National Identification and Civil Status Registry (RENIEC) is designed to solve. It is estimated that some 3,400,000 people do not have identity documents.

267. To resolve this, RENIEC developed a National Plan for the Restoration of Identity 2005–2009, designed to document people who have no national identity document (DNI). One of its target populations was vulnerable groups such as minors and victims of the terrorist violence experienced by the country during the 1980s and 1990s.

268. The Plan's execution rate was 85 per cent. Compared with 2008, an additional 2,093,068 Peruvians were identified and issued with identity documents. As of 31 December 2009, the total number of people identified in the RENIEC single register of natural persons (RUIPN) was 23,648,181. Of the total identified population in possession of a DNI, 19,310,863 are aged 18 and over and 4,317,318 are aged under 18. The total number of Peruvians with a DNI increased from 15,656,693 in 2004 to 23,648,181 in December 2009, a 51-per-cent increase in the number of citizens who have been formally identified.¹⁷³

¹⁷³ To obtain an identity document, minors aged under 17 must be accompanied by a declarant and present their original birth certificate, the declarant's DNI, alien's card or passport, a photograph and a processing fee.

269. A campaign to promote the free issuance of a DNI to minors is also under way, to enable them to access social programmes such as State health, education and social services. This has prompted the State to earmark public resources for the documentation of all children and adolescents (Emergency Decree No. 044–2010-MEF, ordering economic and financial measures for the issuance of a DNI to low-income children and adolescents aged 0–14 years).

270. The Ombudsman’s Office has pointed out that, while a segment of the population will obtain a DNI for the first time, aspects essential to the functioning and sustainability of the documentation strategy must not be overlooked. It maintains that until the geographical, economic, registration, administrative and cultural barriers identified in the documentation process are overcome, there can be no talk of a sustainable documentation strategy, especially bearing in mind that the DNI is only valid for eight years. The Office’s Identity and Citizenship project therefore proposes a number of strategies for tackling various difficulties. For this purpose, it has advocated supervision not only of the documentation process but also of registration procedures, in order to contribute to the social inclusion of the country’s most vulnerable population through recognition of their right to an identity.

Article 17

271. Article 2 (7) of the Constitution sets forth everyone’s right to honour and reputation, to privacy for himself and his family and to his own voice and image. It also states that anyone affected or harmed by inaccurate statements in any mass media is entitled to have incorrect information corrected immediately, proportionately and without charge, without prejudice to any legal liability. Article 130 of the Criminal Code, for its part, states that offending or insulting a person by means of words, gestures or acts shall be punishable by 10 to 40 days’ community service or a 60 to 90 days’ fine.

272. The Constitutional Court¹⁷⁴ has ruled that anyone who considers his right to honour and reputation to have been violated has three possible remedies: civil,¹⁷⁵ criminal¹⁷⁶ and constitutional (*amparo*).¹⁷⁷ The National Human Rights Plan¹⁷⁸ also mentions the need to promote training programmes for journalists and media personnel on how to exercise freedom of the press without violating the rights to honour and reputation.

273. Concerning the right to a correction, the Constitutional Court has ruled that it is essential that information based on incorrect facts disseminated through the exercise of

¹⁷⁴ CC ruling in Case No. 04611–2007-AA/TC, Native Community of Sawawo Hito 40.

¹⁷⁵ Honour may be protected through civil proceedings by “(...) enabling the victim or his heirs to take action demanding cessation of the harmful acts” (art. 17 of the Civil Code), with the corresponding payment of compensation for extracontractual liability (art. 1969 of the Civil Code). Thus, in addition to halting the violation, emphasis is placed on the existence of monetary compensation.

¹⁷⁶ The Criminal Code states that the active perpetrator of one of the offences defined as slander, libel or defamation, affecting the legally protected interest honour, “(...) shall be punishable (...)” by a specific penalty (arts. 130, 131 and 132 of the Criminal Code). In criminal law, proceedings are instituted at the request of the person who considers himself to have been harmed and the basic aim is to punish the perpetrator, rather than to restore the situation to that existing before the right was violated.

¹⁷⁷ *Amparo* proceedings seek to protect a specific fundamental right, “(...) returning things to the situation existing prior to the violation or threatened violation of a constitutional right (...)” (art. 1 of the Code of Constitutional Procedure). Such proceedings are characterized by the need for a rapid solution to avoid the harm becoming irreparable and are the appropriate channel for protecting the right to honour (art. 37 (8) of the Code of Constitutional Procedure).

¹⁷⁸ Supreme Decree No. 017–2005-JUS of 11 December 2005.

freedom of information should be corrected.¹⁷⁹ Correction¹⁸⁰ thus regulates interpersonal relations and is a procedural guarantee. It must also be borne in mind that the right of opinion, protected by article 2 (4) of the Constitution, is not absolute and is subject to limitations that include respect for people's right—also constitutional—to honour and reputation.¹⁸¹

274. Concerning the right to privacy, the Constitutional Court has established guidelines in its case law for dealing with various situations in which people's legal status has been called into question.

275. With regard to electronic or other forms of surveillance, Act No. 27697 establishes criteria restricting such operations.¹⁸² The Constitutional Court has also ruled on this issue, taking the view that the mass media are prohibited from disseminating information that affects the personal or family privacy or the private life of the person under surveillance or third parties, except where this is in the public interest, the latter being determined in each case by the media themselves. If the mass media overstep these limits, both the journalist responsible and the publishers and/or owners will be liable, as determined by the competent authority.¹⁸³

Article 18

276. Article 2 (3) of the Constitution states that everyone has the right to freedom of conscience and religion, either individually or in community with others. All religions may be manifested freely, provided that this does not offend morals or undermine public order.

277. The Constitutional Court has ruled that religious freedom has two aspects, one negative and the other positive. The negative aspect is the prohibition against interference by the State or private individuals in the teaching and practice of religious beliefs or in activities manifesting them. The positive aspect is that the State creates the minimum conditions enabling the individual to exercise the powers implicit in his right to religious freedom.¹⁸⁴

278. The Ministry of Justice is responsible for applying the law and interacting with the population through the Office of Catholic Affairs and the Office of Interreligious Affairs.¹⁸⁵ Both offices maintain an ongoing dialogue on freedom of worship with the Catholic Church and other organized religious groups.

¹⁷⁹ CC ruling in Case No. 3362–2004-AA-TC of 29 August 2006.

¹⁸⁰ According to art. 2 (7) of the Constitution, rectification must be proportionate. This means that, to the extent possible, the corrected information must have the same journalistic impact as the previously published information that is being corrected.

¹⁸¹ CC ruling in Case No. 0003–2006-PI-TC of 23 September 2006.

¹⁸² (a) The judge alone may order surveillance only for crimes envisaged in the Act; (b) Prosecutors are responsible for gathering and monitoring information, assisted by the police; (c) Confidentiality must be maintained by all those involved in the operation; those authorized to request a judge to order a surveillance operation, which may last up to six months but may be extended, are criminal prosecutors and the Public Prosecutor.

¹⁸³ CC ruling in Case No. 00655–2010-PHC/TC of 27 October 2010.

¹⁸⁴ CC ruling in Case No. 0256–2003-HC-TC of 21 April 2005 on an action of *habeas corpus* brought by Mr. Segundo José Quiroz Cabañillas in favour of Mr. Francisco Javier Francia Sánchez against the Dos de Mayo national hospital.

¹⁸⁵ The main function of the Office of Interreligious Affairs is the administrative task of coordinating and promoting the executive branch's relations with religions other than Catholicism, as part of efforts to increase religious freedom.

279. In 2004, the Ministry created a register of non-Catholic religious groups¹⁸⁶ in order to promote freedom of worship and equality between churches by allowing other churches to receive from the State benefits similar to those received by the Catholic Church. So far, 139 religious denominations, 14 religious missions and a religious confederation have been registered.

280. The Constitution also guarantees that religious instruction will be imparted with respect for freedom of conscience,¹⁸⁷ recognizing the separation of church and State.¹⁸⁸ Thus, Act No. 28044, the General Education Act, orders that all schools, both public and private, must provide religious instruction as part of their curriculum, without violating the freedom of conscience of students, parents or teachers. Catholicism is the only religion taught in public schools.

281. Lastly, the Religious Freedom Act, which provides State recognition for all religions on an equal footing and with the same rights, obligations and benefits, was promulgated on 20 December 2010. It guarantees full respect for the religious expressions of Andean, Amazonian and Afro-Peruvian peoples and their right to practice them either individually or in community with others, as well as the right of schoolchildren to be officially exempted from religious instruction. It also establishes that individuals or legal entities that, by act or omission, prevent the exercise of religious freedom shall be punished in accordance with the applicable norms of criminal or administrative law.

282. The Act also states that educational institutions of all kinds and at all levels must respect the rights of pupils to exempt themselves from religious instruction for reasons of conscience or because of their religious beliefs, without this affecting their academic average.

Article 19

283. Article 2 (3) of the Constitution stipulates clearly that there is no crime of opinion, while article 2 (4) states that, by law, everyone has the right to freedom of information, opinion and expression and to disseminate ideas either orally, visually or in writing, using any mass media, without prior authorization, censorship or other impediment.

284. According to the Constitutional Court ruling handed down on 17 October 2005 in Case No. 2262–2004-HC-TC on an action of habeas corpus, freedom of expression guarantees that persons (individually or collectively) may transmit and disseminate their ideas, thoughts, value judgments and opinions freely.

285. Likewise, with regard to freedom of expression, the Constitutional Court ruled that restricting to journalists the right to communicate through the mass media would be unconstitutional, in that it would reduce those rights for all other persons.¹⁸⁹

286. Accordingly, the Public Prosecutor's Office, by Resolution No. 1956–2010-MP-FN published on 25 November 2010, ordered that the jurisdiction of the National Criminal Prosecution Department and the Lima supra-provincial criminal prosecutor's offices should

¹⁸⁶ The register identifies religious groups that have the authority to exercise their rights before government entities and society as a whole.

¹⁸⁷ Constitution of Peru, art. 14.

¹⁸⁸ *Ibid.* art. 50.

¹⁸⁹ CC ruling in Case No. 0027–2005-PI-TC of 20 February 2006 on a proceeding of unconstitutionality.

be extended to allow them to also investigate crimes of homicide, murder, serious injury, kidnapping and extortion against journalists.¹⁹⁰

287. The Ministry of Transport and Communications has also taken steps to ensure that the most vulnerable sectors of the population have access to information, by increasing the availability of broadband Internet access and promoting access to telephone services and television.¹⁹¹

288. There is also a group of communal communications projects aimed at bringing the State's presence to rural areas remote from urban centres.¹⁹²

289. Act No. 28530 on promoting Internet access for persons with disabilities and remodelling public telephone booths¹⁹³ was adopted in April 2005 to give blind people access to the Internet portals of public bodies and universities.

290. Similarly, Act No. 27806 on transparency and access to public information, designed to promote transparency of State action and regulate the fundamental right of access to information, was published on 3 August 2002.

291. The Act is being interpreted and applied by public administrations at all levels of government and the scope of several of its provisions has been interpreted by the judiciary and the Constitutional Court on the occasion of habeas data proceedings alleging violations of the right of access to public information.

292. In recent years, cases involving the dissemination of private communications in the mass media have forced the Constitutional Court to issue a ruling barring the mass media from divulging or disseminating intercepted and recorded telephone conversations, unless the persons recorded have given their authorization or there is a duly substantiated judicial warrant permitting their dissemination on the grounds that it is in the public interest, subject to the media in question being held criminally liable.¹⁹⁴

293. The ruling aroused concern in various sectors of society, prompting the Constitutional Court to issue a resolution clarifying it.¹⁹⁵ In its clarification, designed to ensure that its argument No. 23 was not misinterpreted as prior censorship, the Court stated that "anyone, whether a media journalist, publisher or owner, who has access to such information and intends to disseminate it must evaluate whether its dissemination will affect the personal or family privacy or private life of the persons whose conversations were intercepted, their relatives or third parties. In this case, oversight occurs *ex post facto*, to the extent that the institution guarantees that there is no prior censorship".

294. Like the national press, the foreign press in Peru enjoys the utmost freedom and autonomy in performing its functions. A journalist's visa can be obtained (Aliens Act,

¹⁹⁰ This provision is in keeping with that of the Executive Council of the Judiciary in Administrative Resolution No. 187-2010-CE-PJ of 26 May 2010 expanding the jurisdiction of the National Criminal Division and the Lima supra-provincial criminal courts to allow them to hear cases involving the same crimes.

¹⁹¹ From June 2004 to December 2009, broadband Internet access connections increased from 404,4000 to 897,573 and 196 new districts were provided with Internet service. Between June 2006 and December 2009, 1,072 television and FM radio systems and 142 HF radio systems were installed in 196 villages.

¹⁹² This is achieved by developing radio-broadcasting projects, which essentially involve installing satellite reception, low-voltage transmission and FM radio transmission systems.

¹⁹³ The Act orders the incorporation of access options for visually impaired persons in Internet portals so that they can access the information published there.

¹⁹⁴ CC ruling in Case No. 00655-2010-PHC/TC of 27 October 2010 on an action of *habeas corpus*.

¹⁹⁵ *Ibid.*

Legislative Decree No. 703, art. 11 (f)), conferring special immigrant status and allowing the holder to remain in the country and enjoy facilities for importing his equipment.¹⁹⁶

Article 20

295. In Peru, there are no laws that constitute propaganda for war. On the contrary, everyone has the right to peace, tranquillity, free time and rest and to live in a balanced, appropriate environment, pursuant to article 2 (22) of the Constitution.

296. With respect to any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, article 2 (2) of the Constitution states that everyone has the right to equality before the law and establishes that no one may be discriminated against on grounds of origin, race, sex, language, religion, opinion, economic status or other grounds. Important progress, such as the adoption of Act No. 28867,¹⁹⁷ is being made in this area in order to increase the penalties for the crime of discrimination.¹⁹⁸

297. In 2009, the political group *Alianza Parlamentaria* presented bill No. 3987¹⁹⁹ aimed at defining and punishing any false or ideological act or statement that seeks to promote moral, psychological or physical violence, hatred, racist persecution or any act of discrimination, xenophobia and other related forms of intolerance against individuals or ethnic, religious or cultural communities and national or other minorities on grounds of origin, nationality, race, sex, sexual orientation, language, religion, opinion, economic status or any other grounds.

298. With regard to the punishment of discriminatory practices, mention should be made of the June 2009 conviction of four teachers at a higher technological institute who refused to work with a laboratory assistant who suffered from a motor disability and speech impairment.²⁰⁰

299. In performing its constitutional function of protecting Peruvian citizens, the Peruvian National Police is guided by the police human rights handbook,²⁰¹ which establishes that the police must respect the individual and collective rights and recognize and protect the social, religious, cultural and spiritual rights of all the peasant communities with which it comes into contact nationwide. It also states that police officers must be

¹⁹⁶ This visa is granted to foreign press correspondents, journalists and representatives of foreign media, such as news agencies, newspapers and/or magazines, radio, television and other similar stations, who come to Peru in a professional capacity. A Foreign Press Association was established in Peru on 7 September 1964. Membership is voluntary and is open to foreign correspondents of the world's most prominent media assigned to Peru. The Association was set up to provide various services to its members and defend their rights to unrestricted professional freedom of action and access to information sources. Over the past 10 years, there have been no complaints of problems or restrictions encountered by the foreign press in the course of its work. Whenever it seeks information from government sectors, it is dealt with readily and transparently.

¹⁹⁷ Act No. 28867 of 9 August 2006 amending article 323 of the Criminal Code.

¹⁹⁸ The penalty is increased for public officials who commit this crime, resulting in their being permanently barred from public office and subject to no less than two and no more than four years' imprisonment.

¹⁹⁹ Act preventing racist violence and xenophobia against ethnic, religious and cultural communities and national minorities and combating Nazism and other neo-Nazi movements.

²⁰⁰ Sentence handed down in the Vilma Palma Calle case on 12 June 2009 and upheld by the second specialized criminal division of the Higher Court of Lima Norte.

²⁰¹ Adopted by Inter-ministerial Resolution No. 1452-2006-IN of 31 May 2006 of the Ministry of the Interior, which recognizes native, peasant and ethnic communities, as well as lesbians, gays, transvestites and bisexuals, among other groups, as vulnerable population groups.

guided by the following obligations: to avoid any abusive discriminatory act; not to allow sexual abuse; and to ensure and recognize the rights of freedom of expression, association and assembly.

300. Lastly, there are communities of other nationalities, known as *colonias*, in Peru, such as the Jewish, Arab, Japanese and Chinese communities. There is no discrimination of any kind against them and they are completely free to establish their own centres of worship, associations, sports clubs, schools and other institutions.

Article 21

301. The prevailing norm regulating the right of peaceful assembly in Peru's legislation is the Constitution, article 2 (12) of which establishes the right of everyone to assemble peacefully and without weapons. The Constitution further establishes that meetings held in private locations open to the public do not require advance notice, whereas for those convened in public places and thoroughfares, advance notice must be given to the authorities, which may prohibit them only for justified reasons of public safety or public health. Article 13 of the Children and Adolescents Code also stipulates that children and adolescents have the right to freedom of lawful association and peaceful assembly.

302. Mention should also be made of the police human rights handbook, designed to provide information on doctrinal and normative aspects of human rights related to the functioning of the Peruvian National Police and establishing police procedures and techniques that respect human rights. The handbook includes a chapter on the maintenance of public order, which expands on such important aspects as: good preparation, police officers' appearance when dealing with civilians, communication with demonstrators, rapid intervention and, lastly, the potential moderate and differentiated use of force.

303. Public order may be disrupted by various situations, such as rallies, movements, marches, strikes, public meetings or internal disturbances. In such cases, the handbook provides guidelines for ensuring that police action is consistent with international human rights law, particularly the Basic Principles on the Use of Force and Firearms, and with Peruvian law.

304. The requirements, procedures and conditions that have to be observed in order for the public authorities to authorize the holding of a meeting are set forth in Directive No. 001-2007-IN-1501, issued by the Internal Government Department of the Ministry of the Interior, which establishes the procedure for providing guarantees for the holding of public rallies. The Directive is designed to regulate the procedure for providing guarantees for the holding of public rallies²⁰² and sporting and non-sporting events.

305. In this connection, it should be mentioned that in its ruling in Case No. 4677-2004-PA/TC, the Constitutional Court established that in no circumstances may exercise of the right of assembly be subject to the requirement of prior authorization by the administrative authorities, which may restrict or prohibit that right only on the basis of the specific circumstances of each case and only for objective, sufficient and substantiated reasons.

306. Concerning the restrictions placed on the right of peaceful assembly, it should be explained that freedom of assembly is not an absolute or unlimited right. It is for this reason that the Constitution itself allows the authorities to prohibit it for justified reasons of public safety or public health. Article 137 (1) of the Constitution states that, in the event of a state of emergency, a disturbance of the peace or public order, a disaster or serious

²⁰² Public rallies refer to public meetings, marches, processions, festivities and religious services.

circumstances that threaten the life of the nation, certain rights, including the right to freedom of assembly, may be restricted. In this connection, the Constitutional Court ruling referred to in the previous paragraph established a number of guidelines for restrictions on the right of assembly.

307. In its ruling, the Constitutional Court stated that the concept of public safety envisaged in the Peruvian Constitution as restricting the right of assembly refers both to the safety of members of the public and to national security. As a result, the restrictions that may be imposed on the right of assembly may be motivated by concerns relating to public order and to respect for the fundamental rights and freedoms of third parties. The Court also indicated that the grounds invoked for prohibiting or restricting the right of assembly must be substantiated, in other words, they must put forward objective, sufficient and duly supported reasons. Lastly, the Court stated that the scope of restrictions on the fundamental right of assembly must be particularly limited at election time, when the need to express and exchange ideas is at its height. In keeping with article VII of the preliminary title of the Code of Constitutional Procedure, the Court's ruling establishes a binding precedent whereby exercise of the right of assembly provided for in article 2 (12) of the Constitution may in no circumstances be subject to the requirement of prior authorization by the administrative authorities, which may restrict or prohibit it only on the basis of the specific circumstances of each case and only for objective, sufficient and substantiated reasons.

308. With regard to the instructions given to public officials, particularly police officers, concerning public meetings, there are directives and norms such as the police human rights handbook, which devotes an entire chapter to the maintenance of law and order.

309. The Ministry of the Interior, through its Internal Government Department, has compiled statistics on social conflict for the years 2008 to 2010 showing the main forms taken by protests during that period.²⁰³

310. Concerning Legislative Decree No. 1095 (Rules governing the use of force by the armed forces within the national territory), it must be noted that social protest is a right of any population living in a State ruled by a democratic government. In this context, social protest requires that citizens exercising this right observe the rules permitting the maintenance of public order. This obligation applies equally to all citizens. The maintenance of law and order is part of the system of national defence recognized in articles 163 and 164 of the Constitution, responsibility for which rests mainly with the police, in accordance with article 66 of the Constitution.

311. Article 1 of the above Decree establishes the legal framework regulating the principles, forms, conditions and limitations that govern the use of force by the armed forces in performing their constitutional functions. It also legislates on the use of force in cases where the armed forces support the police, both in situations where a state of emergency has been declared and in situations where it has not.

312. Accordingly, the Decree makes a clear distinction between intervention by the armed forces to neutralize a hostile group and intervention to support police action. A hostile group is defined as an organized group whose aim is prolonged armed resistance against the State. In other words, the target of armed forces intervention is hostilities, not social protest. In such cases, the Decree stipulates the application of international humanitarian law and the prior declaration of a state of emergency. In regulating armed forces intervention in support of the police in situations where a state of emergency has not been declared, the Decree stipulates unrestricted respect for human rights. It indicates the restrictions to which the State is subject, in the event of military or police intervention, with

²⁰³ Available at dggi.mininter.gob.pe, accessed on 22 February 2011.

respect to the rights of citizens living, working or circulating in the area to be guarded and protected by the armed forces. That the Decree is not aimed at criminalizing peaceful protest is clear from its definition of hostile group, which in no way corresponds to the profile of ordinary demonstrators.

Article 22

313. The Peruvian State recognizes the constitutional right to form associations and set up foundations and various kinds of legal organization, without prior authorization and in accordance with the law (Constitution of Peru, art. 2 (13)). Article 80 of the Civil Code states that all associations must have a duly notarized statute, except where the law provides otherwise. All associations must also be registered with the National Public Records Office (SUNARP)²⁰⁴ and cannot be dissolved by administrative decision.

314. With regard to trade unions, domestic legislation allows workers to form trade unions according to their occupation, their employers' affiliation or their place of work. Since there is freedom of association, workers do not need to seek prior authorization in order to set up a trade union. The following components of the Peruvian State are subject to limitations on their right to form trade unions: members of the armed forces and the police (art. 42 of the Constitution), members of the Public Prosecutor's Office and the judiciary (art. 153 of the Constitution) and members of the public administration with decision-making powers or occupying positions of authority (art. 42 of the Constitution). There are 416 registered trade unions in the private sector and 43 in the public sector (mixed public/private employment regime).²⁰⁵

315. With respect to the right to strike, the Constitutional Court has ruled that, in keeping with articles 72 and 73 of the single consolidated text of the Collective Labour Relations Act (Supreme Decree No. 010–2003-TR), workers may exercise that right broadly, provided that the decision to strike is taken in the manner expressly stipulated by law and within the framework of the union's statute.

316. Political parties, for their part, are constituted at the initiative of their founders, upon fulfilment of the established requirements.²⁰⁶ Registration of political parties is public and is open permanently, except during the period from the closing of the registration of candidates to one month after any electoral process. Registration also confers legal status on the political party.

317. Under the rules for the registration of political organizations, the Political Parties Registration Office may, either officially or at the request of legal representatives, cancel²⁰⁷

²⁰⁴ The National Public Records Office (SUNARP) is an autonomous, decentralized judicial body and the governing body of the national public records system.

²⁰⁵ Metropolitan Lima Regional Department of Labour and Employment Promotion.

²⁰⁶ Under Act No. 28904 of 1 November 2003, Political Parties Act; Resolution No. 120–2008-JNE of 28 May 2008, rules for the registration of political organizations; and Resolution No. 016–2006-P/JNE of 7 February 2006, single text of National Elections Board (JNE) administrative procedures. The application for registration is lodged with the Office of Electoral Guidance and Citizens' Services, along with, inter alia, the list of members, whose number must be equal to no less than 1 per cent of the number of citizens who voted in the most recent national elections. Once the application has been accepted, the Political Parties Registration Office issues the corresponding registration number and registers the party electronically (Resolution No. 120–2008-JNE of 28 May 2008).

²⁰⁷ Registration may be cancelled by decision of the competent judicial authority if the party is declared illegal by a court on grounds of anti-democratic conduct. In such cases, the Supreme Court of Justice may, at the request of the Attorney General or the Ombudsman and safeguarding the right of appeal,

a party's registration. It may also do so if, a year after the conclusion of the most recent general election process, a party has not returned at least six representatives to Congress in more than one electoral district, in other words, 5 per cent of the legal number of members of Congress, or has not obtained at least 5 per cent of valid votes nationwide.²⁰⁸ Cancellation of registration results in loss of legal status.

318. Peruvian law establishes that a decision turning down an application to register a political party can be appealed, within five working days, to the Political Parties Registration Office of the National Board of Elections.

319. The Peruvian International Cooperation Agency (APCI) is responsible for conducting and updating the registration of national non-governmental development organizations that are recipients of international technical cooperation. Registration is free and constitutive. Under Legislative Decree No. 295, such organizations may adopt the legal status of associations by adapting their organizational structure to that stipulated in the Civil Code.²⁰⁹

320. Inclusion on the ACPI register of non-governmental development organizations is subject to fulfilment of the requirements established by law.²¹⁰ Registration imposes an obligation on development NGOs to submit the relevant information on the execution and/or completion of projects and/or programmes by funding sources. Failure to comply with this obligation gives rise to penalties as established by Supreme Decree No. 027-2007/ACPI-RE of 18 May 2007 adopting the ACPI regulations on offences and penalties. Development NGOs derive benefits from their inclusion on the ACPI register.²¹¹

321. With regard to human rights associations, there is a National Human Rights Coalition (CNDDHH)²¹² bringing together 29 non-governmental organizations from all over the country.

Article 23

322. In 2002, political and social organizations signed the National Accord, under which the sixteenth State policy envisages the need to strengthen families as the "basic unit for the all-round development of persons, promoting marriage and a family community respectful of the dignity and rights of all its members".

323. Within the framework of the National Accord, Act No. 28452 on the strengthening of the family was promulgated, article 3 of which gave the Ministry of Women and Social Development express responsibility for guiding public policy to strengthen the family, in coordination with all sectors involved in the issue. To that end, a Directorate of the Family

declare a political organization illegal if it believes that its activities are contrary to democratic principles (Act No. 28094 of 1 November 2003 and Resolution No. 120-2008-JNE of 28 May 2008).

²⁰⁸ Act No. 28094 of 1 November 2003, Political Parties Act.

²⁰⁹ Act No. 27692 of 12 April 2002 establishing the Peruvian International Cooperation Agency (APCI).

²¹⁰ Legislative Decree No. 719-91-PCM of 10 November 1991 enacting the International Technical Cooperation Act and Supreme Decree No. 015-92-PCM of 30 January 1992 adopting the Decree's implementing regulations. The grounds for cancellation can be found in Supreme Decree No. 015-92-PCM of 31 January 1992.

²¹¹ Pursuant to Legislative Decree No. 719-91-PCM of 10 November 1991.

²¹² CNDDHH members are private centres and/or institutions and civil not-for-profit non-governmental organizations dedicated to the promotion and protection of human rights and to human rights education, which are either founding members or which apply to join it and after meeting the requirements stipulated in its statutes are duly approved by its board of directors and confirmed by its general meeting.

and the Community was created, made up of the Department to Support and Strengthen the Family, the Children and Adolescents Department and the Older Persons Department.

324. The National Accord and the Act on the strengthening of the family facilitated the mainstreaming of family-related issues²¹³ in various national plans related to human rights. They also contributed to the drafting of the first National Plan to Support the Family (PNAF) 2004–2011, adopted by Supreme Decree No. 005–2004-MIMDES.

325. Under PNAF 2004–2011, progress has been made on policies for balancing family and working life.²¹⁴ These policies include the introduction of breastfeeding facilities and day-care centres in public-sector institutions (Supreme Decrees Nos. 009–2006-MIMDES and 002–2007-MIMDES), protection for pregnant women doing jobs that endanger their health and the normal development of the embryo and the foetus (Act No. 28048 and Supreme Decree No. 009–2004-TR), time off for breastfeeding (Acts Nos. 27240 of 23 December 1999, 27403 of 20 January 2001 and 27591 of 13 December 2001), adoption leave (Act No. 27409 of 25 January 2001), paternity leave (Act No. 29409 of 20 September 2009) and exercise of the right to 90 days’ prenatal and post-natal leave for female staff recruited under the administrative contracting of services regime (Legislative Decree No. 1057 and Supreme Decree No. 075–2008-PCM).

326. Concerning the promotion of men’s equitable sharing of child-rearing, childcare and housework responsibilities,²¹⁵ a “Daddy in action” project was implemented from 2005 to 2008 to encourage fathers to share the burden of child-rearing and housework. A “Handbook for Fathers” is also being distributed to ensure that fathers are vigilant and know what their children are supposed to learn at each level of education. Despite the efforts made, however, action still needs to be taken to disseminate the handbook properly.

327. With regard to the protection of de facto unions,²¹⁶ a municipal register of de facto unions and promotion of access to marriage has been set up in some municipalities around the country, pursuant to article 5 of the Constitution.²¹⁷ This municipal initiative has prompted the presentation of bills²¹⁸ on the subject, which are currently under consideration in Congress. Moreover, Act No. 29560 of 16 June 2010 allows de facto unions to be recognized by a notary; previously, only the judiciary could recognize such unions.

328. In cases of separation and divorce by mutual consent, Act No. 29227 of 16 May 2008 provided for uncontested proceedings for agreed separation and subsequent divorce to be conducted in municipal offices and notary’s offices. This measure is helping not only to expedite such proceedings but also to reduce the judicial caseload.

²¹³ In Case No. 04493–2008-PA-TC, the Constitutional Court noted that the family, as a constitutional institution, is inevitably at the mercy of new social contexts. As a result, social and legal changes, such as women’s integration in society and the workplace, the regulation and high incidence of divorce, and mass migration to the cities, have changed the structure of the traditional nuclear family centred around the figure of the paterfamilias. All this has generated non-traditional family structures, such as de facto, single-parent or reconstituted families, but it does not mean that the family is disintegrating. Rather, the family is undergoing a critical transformation, a normal process of adaptation to the rapid social, political, historical and moral changes affecting the majority of the population.

²¹⁴ Developed in guidelines 3 and 9 of PNAF 2004–2011.

²¹⁵ Guidelines 3 and 9 of PNAF 2004–2011.

²¹⁶ Both spouses and cohabiting partners are entitled to social security health-care coverage, as stipulated in Act No. 26790 and in keeping with article 326 of the Civil Code.

²¹⁷ In the provincial municipality of Callao (Municipal Ordinance No. 000012 of 8 August 2003 and Mayoral Decree No. 00021), the district municipality of Breña (Ordinance No. 139-MDB of 15 December 2004) and the district municipality of El Tambo (Municipal Ordinance No. 008–2007-MDT/CM of 14 June 2007).

²¹⁸ Bills No. 1834/2007-CR, 2405/2007-CR and 2620/2008-CR.

329. Approval has been given for extrajudicial conciliation on child maintenance, custody and visitation to be conducted in the offices for the defence of children and adolescents.²¹⁹ Article 81 of the Children and Adolescents Code has also been amended to give judges the power to order joint custody.

330. In keeping with the best interests of the child, Act No. 28457 of 8 January 2005 introduced into Peru's legal system a new judicial proceeding for establishing the paternity of children born out of wedlock. This special and extremely short proceeding is designed to protect children who have not been recognized.²²⁰

331. Measures taken to safeguard the right to maintenance or support²²¹ include simplification of the rules governing judicial proceedings for maintenance, through the adoption of Act No. 28439 of 28 December 2004. A register of persons who are in arrears with maintenance payments has also been set up and put into operation,²²² targeting persons who are in breach of their obligations despite the issuance and enforcement of an agreed judicial ruling.²²³

332. Among the social programmes offered to recipients on the basis of their family setting, mention should be made of the design and implementation of the JUNTOS social programme. Aimed at the most vulnerable groups, those in situations of extreme poverty, risk and exclusion, it seeks to promote the exercise of their fundamental rights through the coordinated delivery of nutrition, health, education and identity services.

Similarly, in 2007, the National Wawa Wasi Programme adopted the Qatari Wawa service model, which seeks to build the capacities of families and communities living in high Andean areas by creating conditions conducive to all-round early childhood development in rural areas, especially in the three poorest regions: Ayacucho, Huánuco and Huancavelica. Mention should also be made of the Ichispalla project, aimed at enhancing the all-round development of children aged 0 to 6 years in 20 Andean communities in Ayacucho and Huancavelica by strengthening the capacities of the parental and social setting.

334. FONCODES, through its "Improving your life" programme, also provides basic services to rural and low-income families by funding social and economic infrastructure projects designed to meet basic needs (education, health, water, sanitation, road and electrification works).

²¹⁹ Supreme Decree No. 007-2004-MIMDES.

²²⁰ Moreover, to safeguard the right to privacy, a new birth certificate is now issued when paternity or maternity is recognized after the date of registration of the birth.

²²¹ The plaintiff in maintenance proceedings is exempted from the payment of costs, provided that the amount of maintenance demanded does not exceed 20 procedural reference units (URP) (one URP = 355.00 soles), as established in Act No. 26846 amending the Code of Criminal Procedure.

²²² Under Act No. 28970, the personnel offices of public bodies must verify whether incoming staff are on the register of persons in arrears on maintenance payments and, if they are, have an obligation to report them.

²²³ It should also be mentioned that breaching maintenance obligations has been criminalized as failure to provide maintenance (art. 149 of the Criminal Code).

Article 24

335. With regard to the right to a name and to be registered immediately after birth,²²⁴ the main achievements have been the adoption of the Plan for the Restoration of Identity 2005–2009²²⁵ and the National Plan of Action for Children and Adolescents (PNAIA).²²⁶

336. In implementing the above plans, efforts were made to reduce the legislative and economic barriers to the registration of children and adolescents by making registration at birth free of charge through the adoption of Act No. 29462 of 28 December 2009. Act No. 28720 of 25 April 2006, amending articles 20 and 21 of the Civil Code, also made it possible for children born out of wedlock to be registered with the father's name, even in the father's absence.

337. Another initiative aimed at the integration of minors in civil life is the national identity document (DNI) for children and adolescents. National identity documents for vulnerable children and adolescents are now processed free of charge, helping to promote a culture of identity and inclusion among the population and ensuring that a greater number of children have a DNI: in 2009, a total of 4,621,052 children aged under 18 were issued with a national identity document, a 49 per cent increase over 2008.

338. Children and adolescents who have been abandoned or are at risk of abandonment live in residential care homes,²²⁷ which are under the responsibility of the Comprehensive Family Welfare Programme (INABIF), the national institution charged with developing intervention methodologies whereby children at risk are taken into care and their food, clothing and physical and emotional needs are met.

339. Residential care homes aim to ensure the child's appropriate and sustained reintegration in the family and society by strengthening the family as the basic unit of society. Thus, in the period from 2000 to 2010, INABIF managed to strengthen or restore family ties through the reintegration or placement of 9,321 children and adolescents who had been institutionalized in its residential care homes. This shows that over 40 per cent of the children and adolescents cared for during the period in question were returned to a family setting that was conducive to their all-round development.

340. With regard to the problem of child labour, a National Steering Committee for the Prevention and Eradication of Child Labour (CPETI) was established in 2003 as a multisectoral coordinating body. One of its achievements has been the decentralization of its work, with 23 regional steering committees established thus far, while another has been the preparation of the first National Plan for the Prevention and Eradication of Child Labour (PNPETI), adopted by Supreme Decree No. 008–2005-TR. According to estimates from the 2008 National Household Survey (ENAH0), 2,115,000 children and adolescents aged 6 to 17 were employed as part of the economically active population. For the first time in studies on child labour, the Survey²²⁸ presents statistical information disaggregated by peasant communities and Amazonian native communities.²²⁹

²²⁴ The Constitutional Court, in its ruling in Case No. 0550–2008-AA/TC (arguments 17 and 18), stated in a specific case that, in keeping with the principle of the best interests of the child, a minor's right to an identity takes precedence over the principle of the immutability of *res judicata*.

²²⁵ Adopted by Prefectural Resolution No. 772–2005-JEF/RENIEC.

²²⁶ Adopted by Supreme Decree No. 003–2002-PROMUDEH and converted into law by Act No. 28487.

²²⁷ Act No. 29174 of 22 December 2007, General Act on residential care homes for children and adolescents.

²²⁸ Population and Housing Census figures for the period from 1961 to 2007 suggest the emergence of a long-term trend towards a decrease in child labour among children aged 6 to 14. The employment rate among children aged 6 to 14 was 3.4 per cent in 1961 and 2.8 per cent in 2007. More particularly, the

341. PNAIA also seeks to ensure that the worst forms of child labour are eradicated and promotes educational alternatives to it. In this context, Supreme Decree No. 003–2010–MIMDES adopted a list of jobs and activities hazardous or harmful to the all-round health and moral development of adolescents, from which they are therefore barred. Act No. 28992 likewise bars persons aged under 18 from working in any mining activities.

342. Act No. 29465 on the public sector budget for fiscal year 2010 called for a strategic programme on child labour to be designed in order to improve the living conditions of working children and adolescents.

343. With regard to nutritional status, there has been a substantial nationwide reduction in chronic malnutrition. In the period 2007–2010, chronic malnutrition declined by 4.7 percentage points, from 22.6 per cent to 17.9 per cent, meaning that five in every 100 children aged under 5 ceased to be chronically malnourished.²³⁰ This improvement is attributable to the political will existing in recent years and the coordinated action of national, regional and local government entities involved in efforts to combat chronic child malnutrition.

344. Between 2007 and 2010, chronic malnutrition in rural areas declined by 5.6 per cent, from 36.9 per cent to 31.3 per cent, while in urban areas it declined by 1.7 per cent, from 11.8 per cent to 10.1 per cent.

345. With regard to child trafficking, recently amended article 153 of the Criminal Code establishes that capturing, transporting, transferring, taking in, receiving or keeping a child or adolescent for purposes of exploitation is considered trafficking in persons, even when no violence, threats or other forms of coercion are used. When the victim is aged under 14 or is suffering from temporary or permanent physical or mental incapacity, this constitutes an aggravated form of the crime of people trafficking, in which case the perpetrator is liable to at least 25 years' imprisonment.

346. Article 4 of the Children and Adolescents Code²³¹ considers forced labour and economic exploitation of children and adolescents, as well as their forcible recruitment, prostitution, trafficking, sale and all other forms of exploitation, to be extreme forms of child labour that affect their physical and psychological integrity.

347. The National Commission for the Application of International Humanitarian Law (CONADIH)²³² put forward a legislative proposal on the recruitment and enlistment of minors, which affords them greater protection consistent with the best interests of the child. The proposal was presented to the Office of the President of the Council of Ministers, which adopted it and submitted it to Congress, where it became bill No. 46132–2010–PE.

most recent data for 1993 and 2007 point to a sharp drop in this indicator, from 4.1 in 1993 to 2.8 in 2007.

²²⁹ It shows that 85.1 per cent of minors employed in peasant communities work in agriculture and livestock production, as do 91.3 per cent of children and adolescents living in Amazonian native communities. In Amazonian native communities, 36.9 per cent of employed minors work at an age below the legally permitted minimum, while in peasant communities, the proportion is 25.8 per cent. This situation reproduces the national pattern of working minors being less able to attend school: in peasant communities, 33.3 per cent of child workers do not attend school, while only 6.4 per cent of non-working children do not attend school.

²³⁰ Findings of the Population and Family Health Survey (ENDES)-2010.

²³¹ In Peru, the Children and Adolescents Code promulgated in 1993 as a normative development of the CDA was subsequently replaced in its entirety by Act No. 27337 of 8 August 2000, which retained the name Children and Adolescents Code.

²³² Advisory body to the executive branch, responsible for disseminating the principles and norms of international humanitarian law.

The multisectoral commission charged with drawing up the next PNAIA for the period 2011–2021 has also considered this issue.

348. One of the desired outcomes of the PNAIA 2002–2010 was a reduction in the sexual exploitation of children, for which it pursued a variety of strategies. These included the General Tourism Act²³³ promoted by the Ministry of Foreign Trade and Tourism, title IX of which refers to prevention of the sexual exploitation and trading of children and adolescents in the tourism sector. PNAIA staff also coordinated with tourist service providers in cities with high rates of child sexual exploitation, such as Cuzco, Madre de Dios, Iquitos and Lima, with which codes of conduct were signed to prevent child sexual exploitation.

349. Another initiative generated by intersectoral work is that emergency women's shelters now take part in and coordinate with prosecutors and police on operations to uncover and intervene in cases of trafficking.

350. Resolution No. 589–2009-MP-FN of the Attorney General's Office adopted a procedural guide for interviewing child and adolescent victims of sexual abuse, sexual exploitation and trafficking for purposes of sexual exploitation, the aim of which is to provide judicial personnel with a tool enabling them to apply a standardized interview procedure to these vulnerable minors, victims of sexual trafficking, in order to prevent their revictimization. According to this model, victims must be interviewed in a single session conducted in a room, called the Gesell Chamber, equipped for this purpose. Although at present there are only three such rooms nationwide, the State is taking the necessary steps gradually to put the model into effect.

351. Concerning the administration of justice specialized in children and adolescents, Peru bases its legislation on the provisions of the Convention on the Rights of the Child. The Children and Adolescents Code, the domestic legislative counterpart of the Convention on the Rights of the Child, sets forth the main substantive, procedural and criminal enforcement guarantees. Proceedings against an adolescent begin with his arrest or summons to appear at a police station. Notification is then sent to the family prosecutor for a decision on whether to discontinue proceedings or report the offence to the family court judge.

352. If the judge decides to institute proceedings, he must rule on the legal status of the adolescent during the trial, either placing him in pretrial detention in a juvenile centre or handing him over to his parents or those responsible for him. Proceedings conclude with the accused's acquittal or conviction, which may be appealed before a higher court.

353. Under the Children and Adolescents Code, the measures that may be imposed on a juvenile offender range from a simple warning to a maximum prison term of six years. The latter penalty is exceptional, however, and may be imposed only on adolescents aged over 14.

354. It should be mentioned that Act No. 28914 of 4 December 2006 created a special commission to revise the Children and Adolescents Code. The commission began work in May 2007 and, in accordance with its terms of reference, drew up a preliminary draft Code for Children and Adolescents, the first title of which recognizes such guiding principles as the status of children and adolescents as citizens, the concept of the best interests of the child and the role of the family.

Article 25

355. Article 31 of the Constitution gives all citizens the right to vote in exercise of their civil capacity, making it mandatory up to the age of 70.

²³³ Act No. 29408.

356. Citizenship is exercised by all Peruvians over the age of 18, electoral registration being the sole requirement for doing so. Once an individual has registered to vote, he is allowed to exercise his political rights and take part in the conduct of public affairs such as: referendums, legislative proposals, the removal or recall of authorities and demands for accountability. An individual's citizenship rights are suspended if their exercise is barred by a judicial decision sentencing the individual to imprisonment or prohibiting him from exercising his political rights.²³⁴ All citizens may take part in the political life of the country through their political parties, organizations and alliances. In 2005, article 34 of the Constitution was amended through the adoption of Act No. 28480 giving members of the armed forces and the police the right to vote and to exercise citizenship rights.²³⁵

357. The Peruvian electoral system is made up of three bodies, the National Board of Elections (JNE), the National Elections Office (ONPE) and RENIEC, which are responsible for ensuring that elections are transparent and reflect the popular will. One of the main achievements of RENIEC in 2009 was to have increased the total number of people entered in the single identification register for natural persons (RUIPN): that year, an additional 2,093,068 Peruvians were issued with a national identity document.²³⁶

358. With regard to the right to vote, as on earlier occasions, in the most recent regional and municipal elections supreme decrees were issued providing facilities for public and private workers and members of ballot tables to exercise their right to vote.²³⁷ Another facility enabling people to go and vote is that elections are always held on non-working days.

359. Concerning public service, article 6 of the Act on public officials and employees in positions of authority categorizes public officials as follows: those elected by direct, universal popular suffrage, those appointed and removed statutorily and those appointed and removed freely. The conditions stipulated in article 110 of the Constitution for the appointment of candidates to elective public office are that all such appointments must be made through elections.²³⁸

360. Regional presidents, regional councils, mayors and city councillors are elected in the same way and for a period of four years. In this case, dismissal takes the form of removal from office. Any citizen who meets these requirements may be a candidate for any of the positions mentioned. However, there are some exceptions in the case of candidates for election to Congress.²³⁹

²³⁴ In 2001, Congress adopted Legislative Resolution No. 018–2000-CR barring former President Alberto Fujimori from all public office for 10 years.

²³⁵ However, their right to stand for elective office, take part in party activities, demonstrations and campaigns and recruit new party members remains restricted by law until they retire.

²³⁶ As of 31 December 2009, the total number of Peruvians entered in the RENIEC single register and in possession of a DNI was 23,628,181, of whom 19,310,863 were aged over 18 and 4,317,318 were aged under 18.

²³⁷ Supreme Decree No. 093–2010-PCM.

²³⁸ To be President or Vice-President of the Republic, candidates must be Peruvian by birth, be aged over 35 at the time of their candidacy and have the right to vote. A President or Vice-President is dismissed after being punished for one of the offences mentioned in article 117 of the Constitution and is suspended if he is barred temporarily by Congress or judicial proceedings are brought against him in accordance with article 117 of the Constitution. Candidates for Congress must be Peruvian by birth, be aged at least 25 and have the right to vote. Members of Congress may be suspended from their duties for a maximum of 120 days during the legislative term.

²³⁹ The following may not be candidates for election to Congress unless they have been out of office for six months prior to the election: ministers and deputy ministers of State, the Comptroller General and regional authorities; members of the Constitutional Court, the National Council of the Judiciary, the judiciary, the Public Prosecutor's Office or the National Board of Elections; the Ombudsman; the

361. Civil service jobs are covered by Public Employment Framework Act No. 28175, title I, chapter III, article 5 of which states that there is equality of opportunity in access to public employment, for which candidates are selected through open, public competitive examinations by occupational group on the basis of their merits and abilities. The Act on public officials and employees in positions of authority states that as soon as a person is appointed to the civil service, he acquires the status of civil servant. In 2005, a process was initiated whereby a specialized technical body, the National Civil Service Authority (SERVIR), would look into ways of modernizing the civil service.²⁴⁰

Article 26

362. The Peruvian State recognizes non-discrimination not so much as one of a number of elements as a right in itself. As a result, it applies in all areas of social life, not just with regard to the violation of some specific right (art. 2 (2) of the Constitution).

363. Act No. 27270 of 26 May 2006 against acts of discrimination added the crime of discrimination to the Criminal Code. This was amended by Act No. 28867²⁴¹ of 8 August 2006, which recognizes non-discrimination as a legally protected interest that may be protected independently.

364. The Peruvian State recognizes the need to give vulnerable groups and minorities special treatment. This does not constitute discrimination, but rather action to prevent discrimination or implement equality.

365. An ongoing policy of social development and equal treatment has been implemented within the legislative framework of the National Population Policy, adopted by Legislative Decree No. 346 of July 1985 and amended by Act No. 26530 of 9 September 1995, which guarantees equality before the law, without any discrimination,²⁴² and gives priority to the protection of mothers, children, adolescents and older persons. In order to address demographic challenges and take advantage of the opportunities offered by population change in the country to help reduce poverty and social, ethnic and territorial inequalities and inequities, National Population Plans for 1998–2002 (Supreme Decree No. 011–98-

President of the Central Reserve Bank, the Superintendent of Banking and Insurance, the Superintendent of Tax Administration, the National Superintendent of Customs and the Superintendent of Private Pension Fund Administrators; and serving members of the armed forces and the police.

²⁴⁰ Created by Legislative Decree No. 1023, the National Civil Service Authority (SERVIR) is a public body attached to the Office of the President of the Council of Ministers. Its aim is to manage persons working for the State. There are plans for it to become the civil service human resources management body.

²⁴¹ The Act reads as follows:

“Article 323. Discrimination.

Anyone who, either himself or through third parties, discriminates against one or more persons or a group of persons or publicly incites or promotes discriminatory acts, on grounds of race, religion, sex, heredity, parenthood, age, disability, language, ethnic and cultural identity, clothing, political or other opinion or economic status, with a view to annulling or undermining the recognition, enjoyment or exercise of the rights of the person shall be punishable by a minimum of two and a maximum of three years’ imprisonment or 60 to 120 day’s community service.

If the person is a public official or civil servant, the penalty shall be no less than two and no more than four years’ imprisonment and permanent dismissal, in keeping with article 36 (2).

The same prison sentence shall be imposed if the discrimination took the form of physical or mental violence”.

²⁴² Article IV (9) of the preliminary title of Legislative Decree No. 346.

PROMUDEH) and 2010–2014 (Supreme Decree No. 005–2010-MIMDES) were established, as well as, in the latter case, a standing multisectoral commission to implement, monitor and evaluate the Plan.

366. With regard to older persons, Act No. 28803 on older persons, published on 21 July 2006, states that its aim is to provide a legislative framework that guarantees the legal mechanisms for older persons fully to exercise the rights recognized in the Constitution and the international treaties in force, so as to improve their quality of life and ensure that they participate fully in social, economic, political and cultural development, contributing to respect for their dignity.

367. Among other rights, the Act recognizes older persons' right to equal opportunity and a decent life, promoting the protection of their interests and their preferential access to comprehensive health care, transport services and educational, cultural and recreational activities, as well as their right not to be discriminated against in any public or private place. It also gives the Ministry of Women and Social Development responsibility for promoting, through the Department of Older Persons, the creation of integrated care centres for older persons (CIAM) in provincial and district municipalities.

368. The Ministry of Health, through the Executive Directorate for Comprehensive Health Care, is also responsible for the health of older Peruvians and, in keeping with the health sector policy guidelines and the National Plan for Older Persons, has taken action to provide comprehensive care to such persons.

369. With regard to the population as users and consumers of goods and services and their unequal access to producers and distributors, the State, through the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) and its administrative rulings, has heard and ruled on cases involving acts of discrimination, which basically come under two headings, advertising²⁴³ and access to public places²⁴⁴ (although this does not mean that it has not dealt with the issue under other headings), imposing financial and administrative penalties on those responsible.

370. Persons suffering from mental illnesses such as schizophrenia, paranoia and depression and subject to internment measures are particularly vulnerable and the Peruvian State therefore has a special obligation towards them (art. 7 of the Constitution). As a result, the task of developing a State policy for the mental health treatment and rehabilitation of persons subject to internment orders imposed in criminal proceedings falls to both the Ministry of Justice and the Ministry of Health, the latter as lead agency for mental health. The State is also moving ahead with the reform of the health-care model for mentally disabled

²⁴³ Act No. 2957 of 2 September 2010 adopting the Consumer Defence and Protection Code, article 13 (2) of which states: "(...) Likewise, in view of the impact that advertising can have on social behaviour, protecting the consumer from advertising involves ensuring that advertisements do not violate the principle of social improvement and do not give rise to illegal or antisocial conduct, discrimination or other similar acts".

²⁴⁴ Act No. 29571, article 38 of which stipulates:

"Article 38. Prohibition of consumer discrimination.

38.1 Suppliers may not discriminate in any way against consumers on grounds of origin, race, sex, language, religion, opinion, economic status or for any other reason, whether such consumers are involved in or exposed to a consumer relationship.

38.2 It is prohibited to exclude anyone unless there are reasons to fear for the safety of the establishment or the tranquillity of its customers or other similar reasons.

38.3 The differential treatment of customers must be justified on objective, reasonable grounds. Preferential attention in an establishment must be motivated by different de facto situations that warrant different treatment and there must be proportionality between the aim pursued and the different treatment accorded".

persons and respect for their rights, as well as making progress in implementing the 100 Brasilia Regulations regarding Access to Justice for Vulnerable People, among other actions. In this connection, it is important to mention the contribution made by the Ombudsman's Office in its reports Nos. 102 and 140²⁴⁵, the recommendations of which are assisting the mental health treatment and rehabilitation of persons with disabilities.

371. On this basis, Ministerial Resolution No. 336–2006-PCM of 18 September 2006 established a multisectoral commission to evaluate the problems of the prison system and propose solutions. The commission's proposals were included in the National Prison Institute (INPE) strategic plan for 2007–2011, strategic guideline V of which, on prison health, states that it is an INPE priority to “develop and/or strengthen ties with the Ministry of Health at the regional and local levels and increase the number of persons interned on psychiatric grounds who attend or are transferred to mental health hospitals”.

372. With regard to disabled persons, 2003 was declared the International Year of Persons with Disabilities. In Peru, an Equal Opportunity Plan for Persons with Disabilities 2003–2007 was drawn up, becoming the first instrument to propose a set of public policies benefiting disabled persons in Peru. Supreme Decree No. 015–2006-MIMDES, published on 13 December 2006, declared the period 2007–2016 the Decade of Persons with Disabilities in Peru, stipulating in article 3 that the Ministry of Women and Social Development, in coordination with the Ministry of Labour and Employment Promotion, the Ministry of Health and the Ministry of Education, must draw up an Equal Opportunity Plan for Persons with Disabilities 2009–2018. The Plan was adopted by Supreme Decree No. 007–2008-MIMDES.

373. The following have also been adopted: Act No. 27408 of 23 January 2001 establishing preferential care for pregnant women, children and older persons in public health-care centres; Act No. 27471 of 1 June 2001 on the use of additional visual media in television and public service cable programmes for the hearing impaired; and Act No. 29392 of 1 August 2009 establishing administrative offences and the corresponding penalties for failure to comply with the provisions of Act No. 27050,²⁴⁶ the General Act on Persons with Disabilities, imposing administrative penalties in cases such as the failure to give a 50 per cent discount on tickets to cultural, sports or recreational events organized by State entities, up to a maximum of 25 per cent of the total number of tickets.

374. Mention should be made of the presentation to Congress of a proposed general law on persons with disabilities, designed to bring the domestic legal system into line with the standards set by the Convention on the Rights of Persons with Disabilities (bill No. 04707/2010-IC); the proposal is currently being evaluated.

Article 27

375. Peru's Constitution recognizes everyone's right to their ethnic and cultural identity and protects the nation's ethnic and cultural pluralism.²⁴⁷ The State also protects freedom of

²⁴⁵ Available at www.defensoria.go.pe, accessed on 28 March 2011.

²⁴⁶ The Act establishes a legal regime of protection, health care, work, education, rehabilitation, social security and prevention enabling persons with disabilities to achieve their social, economic and cultural development and integration as envisaged in article 7 of the Constitution.

²⁴⁷ Constitution of Peru, art. 2 (19).

conscience and religion, either individually or in community with others, in accordance with article 2 (3) of the Constitution.²⁴⁸

376. The Constitution stipulates that all Peruvians have the right to use their own language before any authority with the assistance of an interpreter. Foreigners may also exercise this right when summoned by any authority.²⁴⁹

377. Article 191 of the Constitution is designed to guarantee the presence of representatives of original peoples on regional councils.

378. The Constitution also recognizes that ethnic minorities have rights of organizational autonomy.²⁵⁰ Thus, the Act on peasant patrols²⁵¹ refers to these patrols as an autonomous, democratic form of communal organization that supports the exercise of the judicial functions of peasant and native communities, as well as functions related to security and communal peace within their territorial jurisdiction.

379. The implementing regulations of the Act on the conservation and sustainable use of biological diversity²⁵² establish the concept of indigenous peoples and recognize that these peoples preserve their own social, economic, cultural and political institutions.²⁵³

380. The Act on the protection of indigenous or original peoples living in isolation or in initial-contact situations²⁵⁴ clearly recognizes the ethnic character of such peoples, given that they do not live in any community.²⁵⁵

381. Article 48 of the 1993 Constitution establishes that, in addition to Spanish, indigenous languages are also official. This provision was implemented through Act No. 28106 of 2003 on the recognition, preservation, promotion and dissemination of indigenous languages, which also stipulates that the State must promote the various forms of expression of indigenous cultures.²⁵⁶

382. It should be noted that under Act No. 24656 of 1987, the General Act on Peasant Communities, the officials required to use indigenous languages are those belonging to peasant communities.

383. With regard to equality, social inclusion, interculturalism and law of indigenous peoples, various examples of relevant legislation are attached to this report (see annex 25).

384. There have been some important developments in recent years, such as the establishment of the Huancavelica Departmental Police Academy, which requires that all its members have a working knowledge of Quechua. The Pucallpa Departmental Police

²⁴⁸ Coca leaf is one specific case in which the Constitutional Court has applied these ideas, recognizing that coca leaf and its traditional use form part of a particular cultural characteristic of Peru. CC ruling in Case No. 0006–2008-PI-TC1 issued on 11 June 2008 in a proceeding of unconstitutionality.

²⁴⁹ Constitution of Peru, art. 2 (19).

²⁵⁰ *Ibid.* art. 89.

²⁵¹ Act No. 27908, promulgated in 2002.

²⁵² Supreme Decree No. 068–2001-PCM of 21 June 2001.

²⁵³ This definition includes uncontacted groups and those that, although integrated, have not yet been legally recognized as native or peasant communities. A similar definition is used in Act No. 27811 on the protection of biological diversity and of the collective knowledge of indigenous peoples, adopted in 2002.

²⁵⁴ Act No. 28736 on the protection of indigenous or original peoples living in isolation or in initial-contact situations, adopted in 2006.

²⁵⁵ The Act establishes a special, cross-sectoral regime for the protection of such peoples, guaranteeing, in particular, their rights to life and health and safeguarding their existence and integrity.

²⁵⁶ In 2009, the Institute for the Development of Andean, Amazonian and Afro-Peruvian peoples drew up an ethnolinguistic map identifying 67 different linguistic groups.

Academy is also encouraging the entry of some Shipibo students, while the Ayacucho Departmental Police Academy has 20 indigenous Asháninka students who are on scholarships. For now, applicants for employment in the Public Prosecutor's Office or the judiciary who demonstrate that they speak Quechua or Aymara score higher on their job applications.

385. Lastly, article 17 of the 1993 Constitution establishes that the State has an obligation to promote intercultural bilingual education according to the characteristics of each area, preserve the country's various cultural and linguistic manifestations and promote national integration.²⁵⁷

²⁵⁷ Accordingly, Act No. 27818 on intercultural bilingual education was promulgated on 23 July 2002. The Act recognizes that Peru is culturally diverse and affirms the importance of intercultural bilingual education in regions where there are indigenous peoples. Article 5 of Act No. 23384, the General Education Act, also establishes that the State must promote knowledge of the corresponding living languages.