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HABILITACIÓN PARA
LA PARTICIPACIÓN
EN LAS ACTIVIDADES
DE LA OEA

Dra. Louise Arbour
High Commissioner for Human Rights
United Nations

Dear Dra. Arbour,

Receive our warm greetings, we are the National Coordinator for Human Rights from Peru, institution working over 20 years in the country and which groups 66 organizations at national level.

This letter is a contribution to the Universal Periodic Review of the Human Rights Council, main mechanism in the reform process of the United Nations and specially, the consolidation of the universal system of protection of human rights.

This way, and *ad portas* from the first UPR period where Peru will present a report about human rights, we wish to send some impressions from the civil society we have regarding the issue and noting some characteristics of the socio political situation our country is going through.

Seven years have passed since the fall of president Fujimori's dictatorial regime, today in legal procedure for serious violations to human rights, and at the end of an armed conflict that devastated the country during two decades, Peru shows before the international community signs of economic stability – with a sustainable growth of the GNP, fiscal discipline, growing integration in the international market, etc. – and several commercial agreements in course. However, this apparent economic prosperity has not been advancing hand in hand with democratic institutional strengthening, the fulfillment of international commitments regarding human rights, the pending agenda on the post internal armed conflict and the reduction of great social inequities; situations that require a greater political commitment from the Peruvian State like the support from the whole international community¹.

LA
COORDINADORA
NACIONAL
DE DERECHOS
HUMANOS
(CNDDHH)
ES UN COLECTIVO
DE 67
ORGANISMOS NO
GUBERNAMENTALES
PARA LA
DEFENSA,
PROMOCIÓN Y
EDUCACIÓN DE
LOS DERECHOS
HUMANOS
EN TODO EL PAÍS

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In the front of democratic institutionalism, Peru faces a halt in the follow-up of the recommendations of the Truth and Reconciliation Report, especially regarding the process of opening proceedings for victims of the internal armed conflict, like the process itself of the state's democratic reform. This way, for example, in 2001 the Inter American Court of Human Rights declared the Amnesty Laws 25479 and 25492 invalid, and we only achieved firm sentences in two cases of human rights violations. The first called "Delta del Pichanki", where peasants involved in political violence and two policemen were sentenced. And the Chuschi case, for death and disappearance of 4 peasants in the Chuschi, Ayacucho in 1991. For this crime a Major of the Peruvian Army Colins Collantes was sentenced to 16 years of imprisonment and the Sub Officer of the National Police Jaurez Aspiro to six years of imprisonment; these resolutions were confirmed by the Supreme Court. There are four other sentences in first instance for different violations to human rights and a firm sentence for the leadership of the armed group "Sendero Luminoso", sentencing the head of this subversive group for life. Progress regarding this matter would be different if there weren't any clear position on behalf of the state sectors, of concealing the intellectual and material authors of diverse crimes. Pointing out briefly that in the Peruvian judicial system, we find permanent obstacles and with interference of other powers, mainly from the Defense sector where there is no collaboration for the proceedings¹ but have even protected many of their members through unconstitutional laws. This reached its peak, when in October 2006 the Executive approved a norm so the State pays legal defense to any member of the Armed Forces or the National Police, accused of a human rights violation; while thousands of victims due to poverty, geographic exclusion, social and cultural marginalization (managing another language which is not Spanish) cannot accede to legal defense and have their right to justice and even their physical integrity damaged².

Almost half the cases (26 proceedings) delivered to the Public Ministry on behalf of the Truth and Reconciliation Commission are still under preliminary investigation in spite that over three years have passed since their initiation.³ Regarding the

¹ For example see the Human Rights Watch Report "La Segunda Oportunidad de Alan Garcia: La Justicia en los Casos de Abusos de los Derechos Humanos en Perú", July 2006 where it is conformed that "the armed forces has systematically denied to deliver relevant information to civilian investigators". Specially, due to the decision of approving the ruling of the Defence Commission before a full session of the legislative power, where it is reaffirmed in the axes declared illegal by the Constitutional tribunal in the sentence 023-2003, published in October 2004. This sentence points out that military judges cannot be officials in activity, that their appointment cannot be made by the Executive Power, that the Public ministry is autonomous and so there cannot be a Military Public Ministry and finally that the military in retirement situation cannot be judged by military tribunals due to their incorporation to civilian life.

² In Peru there is not any specific legislation for the protection of witnesses-victims in the case of human rights, this situation worsens the cases against crimes against human rights and crimes against humanity due to the internal armed conflict.

³ Informe Defensorial N° 128, Defensoría del Pueblo en el Perú. August 2007, pages 109 e.a. The Ombudsman highlights that "The Inter American Human Rights Court has pointed out the slow pace at which fiscal investigations make progress and these can imply violation to judicial guarantees and the right to judicial

reparation to victims the process of accreditation to make a Victims Register, this has already began in charge of the Reparation Council. However, also has started, on behalf of politicians belonging to the government like of Fujimori's followers, a discrediting campaign which intends, according to explicit declarations, to question the management of their president like the halting of the work under the argument that they are "repairing terrorists". In this sense, political support from the government is urgent to strengthen and protect it from these actions. In the case of the collective reparation to communities affected in charge of the Multi Sectorial High Level Commission, we find difficulties to implement a reparation protocol that can distinguish the execution of these from other public policies of the right to development. Likewise, unfortunately the subject of institutional reforms, very important for not repeating the period of violence, have had such little progress in the reform of the armed and police forces, the judicial system, the educational system and the presence of state services for the zones affected by violence.

Additionally point out that during last year, the working conditions for civil society in general and particularly human rights organizations, have been spoiled confronting a progressive increase of hostilities campaigns, threats and even intervention with little or null investigation will and protection on behalf of the competent authorities.

An instrument that should serve to measure policies regarding human rights and, particularly, Economic, Cultural and Social rights was the National Human Rights Plan (NHRP).⁴ This document obliged the State to carry out positive actions regarding different human fundamental rights and was elaborated from 18 macro regional consultations and 10 regional consultations which involved almost a thousand social leaders and all the Executives instances (Ministries and Decentralized Public Organizations), like congressmen/women and the People's Ombudsman. However, until now the current government has not given it a due treatment, pointing out that it is not legitimate for not going through political accords, denying all the process developed. This norm – even when in many cases actions have taken place – has not been considered as a guideline regarding human rights issues, as it was intended to be. So the Peruvian State should implement the National Plan for Human Rights and widen it until fulfilling the Regional Human Rights Plans.

On the other hand, the pressure from the local communication media is more and more frequent, specially, those that disseminate critic messages towards the government.⁵ There are also serious access problems to the right to justice, caused not only by the judicial system's inefficiency by but high levels of corruption.

protection...”

⁴ DS. 017-2005 – JUS Creates the National Human Rights Plan and was promulgated on December 10th, 2005.

⁵ In April 2007, the Transportation and Communication Ministry ordered the closure of three radio and three television stations that disseminated the death of Marvin Gonzales by the police, during a regional strike against the government. In September the Orion Station was closed, in Pisco-Ica, for transmitting information related to discontent of the population affected by the earthquake. In all these cases, determined formal matters were used

Corruption continues to be an extended phenomenon over which several denunciations have been made, but they have not received proper attention from the authorities until the recent creation of the new bureaucratic entity, still trying to define its functions and until today lacks of resources to act.⁶

Another reason of great concern is the increase of the torture rates in the detention centers and in the armed forces. The Committee against Torture recommended in their review of the country report 2006 that the Peruvian State should implement a National Register on Torture and Other Inhuman Treatments, measure that has not been taken and that urges the State to fulfill with the established in the Facultative Protocol of the Convention against Torture and establish a National Prevention Mechanism.⁷

Likewise, and according to their international commitments, the adaptation of the criminal legislation to the Rome Statute is pending, where the incorporation of crimes against humanity and the amplification of the concept of sexual violation are highlighted, this last one of major importance for the protection of women's human rights.

Finally comment that the country is facing several problems related to the struggle against poverty, a situation that makes vulnerable economic, social and cultural rights of great part of the people,⁸ concentrated in rural zones and Andean and Amazon zones, like post conflict zones. From strong social protests by mid 2007⁹ Congress granted faculties to the Executive to enact legal norms to stabilize the situation. Among these norms, there are some that cause great concern from human rights and fundamental freedoms view point because they criminalize in many cases social demonstrations and restrict people from participating in them.¹⁰ Also, the

as an excuse to shut them down. However, many enterprises continue working without any objection in spite of committing much more serious infractions.

⁶ Although in 2007 the National Anti Corruption Office was created, this basically acts at executive level.

⁷ The term for its implementation expired on October 14th, 2007. It is important to point out that this mechanism fulfills with all the standards of autonomy and legitimacy included in the protocol. The National Coordinator of Human Rights is developing a campaign to appoint the People's Ombudsman for that purpose. For the time being, the only register regarding this issue is in charge of the People's Ombudsman, of cases reported in their instances.

⁸ According to the Report of the National Survey of Homes of the National Institute of Statistics and Informatics of 2006, 69.3% of rural citizens are in poverty situation and 37.1% in extreme poverty situation. The total diminishing of poverty in the rural sector in the period 2005-2006 was only 0.5%, while the diminishing of extreme poverty only 0.8%. Source: Technical Report ENAHO 2006. National Statistics Institute

⁹ Published on July 22th, 2007.

¹⁰ For example, the modification of Article 200 of the Criminal Code establishes the possibility of sanctioning public servants with decision power to who hold trustworthy or directive posts who participate in strikes or protests. Likewise included under the extortion crime "(...) by violence or threat, take over of premises, obstacle communication roads or impedes free transit of citizenship or disrupts the normal functioning of public services or the execution of works legally authorized, with object of obtaining from authorities any benefit or illegal economic advantage of any kind (...)" Additionally modifying Article 20 of the Criminal Code indicating that the police agents or the military who cause injuries or deaths "(...) in the

writing of the extortion crime according to the Legislative Decree 982 implies total denaturalization, so it's inclusive to a public action that pretends to denunciate a violation to human rights or protest against the damage of the environment would be considered extortion. The new exemplification of the extortion crime penalizes and disposes the in-habilitation of public servants just for participating in strikes. This article would be penalizing the right of freedom of expression and to participate in public matters that any citizen has and indirectly present the strike as a criminal action.

Welcoming the initiative of this consultation process of the civil society in the UPR on behalf of your distinguished office.

Sincerely yours,



Javier Torres Seoane
Executive Secretary (a.i.)
National Coordinator for Human Rights

fulfilment of their duty and in use of their arms in a regulated manner (...)” are exempt of criminal responsibilities. These measures have contained the protest temporally but combined with a weak functioning or absence of institutional channels for demands of citizens towards the State, a confrontational environment has been fostered and with very little space for dialogue.