

report was prepared, Peru did not observe the general conditions provided in international law for a state of emergency. The excessive powers given to the police, enabling them to impose incommunicado detention unilaterally, without consulting with a judge, and the restrictions of the right of defence at both civil and military "faceless" tribunals were inconsistent with provisions of international human rights treaties to which Peru is a party, in particular those that provide for the right to due process and its components.

The narrative on the ongoing process of judicial reform sets the context by noting widespread agreement that there is an acute need to reform the judiciary in Peru. The problems include poor remuneration of judges; poor training; lengthy legal procedures; limited access to justice; weak alternative mechanisms for dispute resolution; deficient management systems; weak courtroom management; weak monitoring of the system; poor physical infrastructure; and rampant corruption.

Reference is made to the World Bank's programme related to the administration of justice in Peru. The objectives of the programme are to: improve access to the judicial power; reduce the lengthy administration of justice; improve the professionalism of lawyers and judges and the quality of human resources, both judicial and administrative; and strengthen the judicial institutions and other institutions in their capacity to resolve conflicts.

Concerns related to the reform process undertaken by the government within this general framework, with the modernization of the system as an added objective, are noted as including, *inter alia*: the high degree of centralization of the decision-making process and of the management of the budget assigned to the Executive Commission of the Judiciary which is widely perceived to be closely linked to the executive branch; there is a perception that the establishment of the Executive Commission of the Judiciary and the Executive Commission of the Public Ministry is an inappropriate act of interference in the judiciary on the part of the executive branch; the provisional appointment of a judge had become standard practice within the judiciary, leaving judges more vulnerable to government interference and violating the principle of security of tenure; provisional judges are used to try cases of terrorist-related crimes, violating the principle that the trial of persons accused of security-related crimes by judges without security of tenure constitutes *prima facie* a violation of the right to be tried by an independent tribunal; provisional judges can be transferred without their consent and on instruction from the Executive Commission of the Judiciary; Law 26.898 undermines the independence of judges insofar as it extends, without limit, the number of temporary judges, while suspending the nomination of permanent judges by the National Council of the Magistracy; and the powers of the Office of Internal Affairs within the judiciary to investigate the conduct of provisional judges or provisional prosecutors is limited.

With regard to human rights defenders and lawyers defending victims of human rights violations or persons accused of terrorist-related activities or treason, the SR stated that their situation is reported to be particularly difficult. The report briefly describes several cases in which, because of their work, lawyers were subjected to threats and intimidation by civilian and military authorities. The report notes that the threats were not adequately investigated by the appropriate authorities and called into question the ability of the state to provide the necessary conditions for lawyers to discharge their professional duties.

The report recommends, *inter alia*, that:

- ♦ if "faceless" tribunals are still being used within the military courts, they be abolished immediately;
- ♦ the continuing practice of referring cases of human rights violations/wrongdoing committed by members of the armed forces to military courts be discontinued;
- ♦ adequate resources be made available to the Public Ministry in order to allow it to deal with the enormous backlog of cases, and to hire additional prosecutors to deal with the many outstanding cases;
- ♦ the administrative reform of the judiciary include consultations with all actors in the administration of justice, particularly judges and lawyers, and not be unilaterally implemented by the Executive Commission of the Judiciary;
- ♦ the selection, appointment and dismissal of judges be left entirely to the organs provided by law and the discipline of judges accused of misconduct be carried out through regular mechanisms established on a permanent basis within the judicial branch;
- ♦ the government provide judges with continuing legal education during their tenure in office to acquaint them with the latest developments in the law and provide for this training to be carried out exclusively by the Academy of the Magistracy;
- ♦ the government and its agencies provide lawyers with the necessary guarantees to enable them to discharge their professional duties without any intimidation, harassment or threats; the government refrain from identifying lawyers with the causes of their clients;
- ♦ steps be taken to establish a national bar association;
- ♦ lawyers and non-governmental organizations cooperate fully with the Ad Hoc Commission for Pardons and its work in reviewing the cases of innocent people who have been tried and sentenced by civil and military "faceless" tribunals; and
- ♦ the wrongful conviction and sentencing of persons be removed from the records by a judicial institution and innocent victims adequately compensated for the injuries suffered.