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PERU

Torture and ill-treatment – Time to put words into practice

Introduction

Despite major political changes in Peru, and a renewed commitment to human rights by those in power, torture and ill-treatment remain a serious problem. This legacy of more than 20 years of violence and impunity cannot be eradicated without a serious and extensive program of action by the authorities.

Recent victims of torture and ill-treatment include political prisoners, especially those held on “terrorism”-related charges, ordinary criminal suspects and military conscripts. They include children as well as adults, women as well as men. During the 20 years of internal armed conflict in Peru, both government and armed opposition forces committed serious and widespread human rights abuses, including torture and ill-treatment. As the intensity of internal armed conflict in Peru has decreased,¹ the torture and ill-treatment of ordinary criminals has started to emerge as a more prominent problem.

The perpetrators of torture and ill-treatment identified in this report are mostly police officers, but also prison guards and military personnel. Most victims report that they were ill-treated or tortured in police custody during the pre-trial investigation phase, in order to force them to confess to a crime. Police and prosecutors rely heavily, often solely, on confessions to secure convictions. Confessions extracted under torture and ill-treatment have been admitted as evidence in court, even when later withdrawn or shown to have been extracted under duress. Torture is also used to punish detainees and prisoners.

Torture methods documented in this report include electro-shock torture, asphyxiation, near-drowning, beating, sexual abuse including rape, denial of food and psychological torture.

¹ According to the latest reports received by Amnesty International, the *Movimiento Revolucionario Túpac Amaru* (MRTA), Túpac Amaru Revolutionary Movement, is virtually extinct and *Sendero Luminoso* (SL), Shining Path, is only active in areas of Alto Huallaga and Junín department.

Torture and ill-treatment persist at least in part because of the lack of effective investigations when complaints of torture are lodged. Perpetrators of this crime often go unpunished, are charged with lesser offences or are tried in military courts which lack independence and impartiality.² In the three years since a law criminalizing torture was passed in Peru,³ in only two cases have perpetrators been convicted.⁴

Many victims of torture withdraw their complaints because they are intimidated, harassed and threatened. Such acts of intimidation are committed with impunity. As a result, the number of reports of torture and ill-treatment that Amnesty International receives represents only a fraction of the real total.

There have been many important political changes in Peru since October 2000, when Amnesty International launched its major worldwide campaign to eradicate the use of torture. These changes have opened a window of opportunity for a real improvement in the human rights situation in Peru. However, despite the commitment to respect human rights expressed by both former President Valentín Paniagua and current President Alejandro Toledo, and measures for the promotion and protection of human rights implemented by government authorities since former President Alberto Fujimori left office in November 2000, torture and ill-treatment continue to be committed by members of the security forces and prison guards.

² See the case of Aldo Mercedes Ramírez below.

³ Article 321 of Peru's Criminal Code, incorporated by Law N° 26926 on 19 February 1998, reads: "Any civil servant, public official or person acting with the consent or acquiescence of the former, who inflicts pain or suffering to others, either physical or mental, or who subjects a person to conditions or methods which deny their personality or diminish their physical or mental capacity, even if they do not cause physical or mental pain, in order to obtain a confession or information either from the victim or a third person, or to punish them for anything they have done or are believed to have done, or to intimidate or coerce them, will be imprisoned for no less than five years and no more than ten. If the torture results in the victim's death, or causes serious injury, or the agent could have prevented this result, he/she will be imprisoned for no less than eight years and no more than 20, or for no less than six and no more than 20 respectively." (Unofficial translation by Amnesty International). "*El funcionario o servidor público o cualquier persona, con el consentimiento o aquiescencia de aquel, que inflija a otro dolores o sufrimientos graves, sean físicos o mentales, o lo someta a condiciones o métodos que anulen su personalidad o disminuyan su capacidad física o mental, aunque no causen dolor físico o aflicción psíquica, con el fin de obtener de la víctima o de un tercero una confesión o información, o de castigarla por cualquier hecho que haya cometido o se sospecha que ha cometido, o de intimidarla o de coaccionarla, será reprimido con pena privativa de libertad no menor de cinco ni mayor de diez años. Si la tortura causa la muerte del agraviado o le produce lesión grave o el agente pudo prever este resultado, la pena privativa de libertad será respectivamente no menor de ocho ni mayor de veinte años, ni menor de seis ni mayor de doce años.*"

⁴ See the case of Pablo Pascual Espinoza Lome and Huber Méndez Barzola below.

Torture was made a punishable offence in Peru only in 1998. In 1999, Amnesty International published a report, *Peru: Legislation is not enough. Torture must be abolished in practice*,⁵ which expressed concern that torture continued to be widespread in Peru. A year later, in November 2000, the organization compiled another major report, *Peru: Torture continues unabated*,⁶ which featured more than 20 cases of torture and ill-treatment of detainees by members of the security forces and prison guards.

Amnesty International is now publishing a third report on the problem of torture in Peru. More than 30 individual cases are featured in this report. Some occurred before former President Alberto Fujimori left office in November 2000, but remain unresolved. Others are reports of torture received by Amnesty International since November 2000.

Amnesty International believes, therefore, that it is now essential that the Peruvian authorities take decisive and wideranging measures to eradicate torture and ill-treatment.

1. The legacy of widespread human rights abuses

For two decades, Peru was wracked by internal armed conflict between the Peruvian state and two armed opposition groups, *Sendero Luminoso*, Shining Path, and the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement. During this period of violence, state agents and armed opposition groups violated some of the fundamental rights of a large part of the population.

Since 1980, when the internal armed conflict began, Amnesty International has repeatedly expressed its deep concern both about the crimes committed by armed opposition groups and about the violations of human rights committed by the Peruvian authorities. Amnesty International believes that states have a duty to take all necessary measures to protect the lives and well-being of the inhabitants of their country. However, such measures cannot be used as an excuse to violate fundamental human rights.

In the context of violence and fear, an important part of Peruvian society was persuaded that human rights violations committed by the security forces were a price that had to be paid in order to ensure security and peace. The majority of human rights abuses were perpetrated against the poorest and most unprotected people in society, such as

⁵ AI Index AMR 46/17/99, September 1999.

⁶ AI Index AMR 46/40/00, December 2000.

indigenous populations or peasant communities living in remote and marginal areas of the country, many of them with little or no formal education.

Amnesty International has documented thousands of cases of ill-treatment and torture of people charged with “terrorism”-related offences in the context of the internal armed conflict. According to human rights organizations in Peru, more than 70 per cent of those charged with such offences have alleged that they were subjected to torture, including rape, or ill-treatment.⁷ Figures from the Peruvian Ombudsman’s office show that more than 500 people falsely convicted of “terrorism”-related offences were pardoned during the decade that President Alberto Fujimori was in power between 1990 and 2000. Of these, 38 per cent stated before a judge that they had been tortured and ill-treated to force them to sign confessions.⁸

Although the majority of cases of torture documented since the 1980s involved people suspected of “terrorism”-related offences, Amnesty International believes that ordinary, non-political, detainees and prisoners were also frequently tortured and ill-treated. In the 10-year period between 1988 and 1998, human rights organizations in Peru recorded more than 4,500 cases of torture and ill-treatment. Of these, at least 570 were cases of ordinary criminals.⁹

Legal shortcomings

⁷ See *Instituto de Defensa Legal* report, *¿Quiénes son los Inocentes?*, 1997, p.25.

⁸ See Peruvian Ombudsman’s Office report, *La labor de la Comisión Ad-Hoc a favor de los inocentes en prisión*, 2000, p.62.

⁹ See *Coordinadora Nacional de Derechos Humanos* report, *Análisis de la problemática de la tortura en el Perú*, 1999, p.21.

The frequent use of torture and ill-treatment against detainees charged with “terrorism”-related offences since 1992 arises in part from the lack of safeguards for detainees under the 1992 anti-“terrorism” legislation¹⁰ and the 1998 legislation on “aggravated terrorism” (“*terrorismo agravado*”).¹¹ These laws not only undermine safeguards designed to prevent torture and ill-treatment, but also violate the right to a fair trial.

Both laws grant extensive powers to the police during the pre-trial investigation phase. The police can order and detain a suspect without an arrest warrant. Depending on the complexity of the case, they can hold the suspect incommunicado for up to 10 days. This can be ordered without a judge’s authorization under the 1992 anti-“terrorism” legislation. Moreover, detainees can be held under arrest for up to 15 days without charge, and for a further 15 days in the case of the “terrorism”-related crime of treason¹² and the crime of “aggravated terrorism”.

¹⁰ The wide-ranging anti-terrorism decree laws issued by ex-President Alberto Fujimori and his Council of Ministers following the suspension of constitutional rule in April 1992 included Decree Laws N° 25475 of May 1992, Decree Law N°25564 of June 1992, Decree Law N° 25659 of August 1992, Decree Law N° 25880 of November 1992. These decrees widened the definition of “terrorism”-related offences, introduced incommunicado detention for 10 days during the police investigation, reduced the age of criminal responsibility for “terrorism”-related crimes from 18 to 15, granted the police unlimited pre-trial powers, accelerated trial procedures and significantly lengthened the terms of imprisonment of those convicted. A series of amendments to the anti-terrorism legislation have been made since 1993. For further information on the 1992 anti-“terrorism” legislation see AI reports: *Peru: Human Rights since the Suspension of Constitutional Government*, AMR 46/13/93, May 1993; *Peru: Anti-terrorism laws continue to fall short of international human rights standards*, AMR 46/05/94, April 1994; *Peru: Reforms of anti-terrorism laws fail to match international human rights standards*, AMR 46/06/95, October 1995, *Peru: Government persists in retaining unfair trial procedures*, AMR 46/25/96, December 1996.

¹¹ The “Law against aggravated terrorism”, “*Ley contra el terrorismo agravado*”, Decree N° 895, came into effect in May 1998. This Decree was established to combat organized crime (“*delincuencia común organizada*”). Article 1 describes the crimes it encompasses as: “He/she who is a member or an accomplice of a juvenile gang, association or criminal group which carries or uses war weapons, grenades and/or explosives to commit theft, kidnap, extortion, crimes against life, integrity or health, crimes against property, crimes against individual liberty, and crimes against public security, is committing the crime of Aggravated Terrorism, even if he commits the crime on an individual basis”. (Unofficial translation by Amnesty International). “*El que integra o es cómplice de una banda, asociación o agrupación criminal que porte o utilice armas de guerra, granadas y/o explosivos para perpetrar los delitos de robo, secuestro, extorsión, delito contra la vida, el cuerpo y la salud; delitos contra el patrimonio; delitos contra la libertad individual; y delitos contra la seguridad pública, comete el delito de Terrorismo Agravado, aunque para la comisión del delito actúe en forma individual*”. On 29 November 2001 the Constitutional Tribunal ruled that this law was unconstitutional. See below.

¹² Decree Law N°25475 was the first of a set of anti-“terrorism” decrees issued in 1992 to combat the armed opposition. The definition of “crimes of terrorism” under this law is wide-ranging and lacks precision. Those accused of these crimes range from those who “carry out acts against the life, physical integrity, health, freedom and security of individuals”, to those who, “*by whatever means*” (Amnesty International’s emphasis), incite the commission of “terrorism”-related crimes, or are seen to favour or excuse such crimes. In addition, Decree Law N°25659 defines the terrorism-related “crime of treason” with the terms set out in Decree Law N°25475, but links this crime to the means employed and their effects on property and life. Those accused of being members of

Amnesty International considers that 15 days in police custody, with a possible 10 days held incommunicado, constitutes a legal framework which facilitates the use of torture and ill-treatment. The International Covenant on Civil and Political Rights (ICCPR), in article 9.3, states that “[a]nyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power...” The UN Human Rights Committee stated in 1982 that “promptly” in this context must be understood as not exceeding “a few days”.¹³ In addition, the Inter-American Commission on Human Rights’ 1983 report on the human rights situation in Cuba considered that a period of one week before being brought before a judicial authority was “an excessively prolonged period”.¹⁴

an armed opposition group, whether in their capacity as leaders or by engaging in operations designed to attack and kill, and anyone who aids and abets the commission of “crimes of terrorism”, may be charged with treason.

¹³ UN Human Rights Committee, General Comment 8 on Article 9 of the ICCPR, para. 2, 30 July 1982.

¹⁴ OEA/S.R.L./II.61, Doc. 29 rev 1, Spanish Original, October 1983, page 41, para. 13.

In 1995, the UN Special Rapporteur on Torture stated in his conclusions and recommendations on Peru's report to the UN Human Rights Commission: "Torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal and persons held incommunicado should be released without delay. Legal provisions should ensure that detainees be given access to legal counsel within 24 hours of detention. Security personnel who do not honour such provisions should be punished. In exceptional circumstances, under which it is contended that prompt contact with a detainee's lawyer might raise genuine security concerns, and where restriction of such contact is judicially approved, it should at least be possible to allow a meeting with an independent lawyer, such as one recommended by a bar association. In all circumstances, a relative of the detainee should be informed of the arrest and place of detention within 18 hours".¹⁵

Another concern for Amnesty International is that in cases of "terrorism"-related offences under the 1992 anti-"terrorism" legislation, the police in charge of the pre-trial investigation cannot be called by the defence to be questioned about the methods used in their investigation.¹⁶ This erodes the right to have an adequate defence, to have evidence obtained under torture excluded from trials and, at the same time, guarantees impunity for officers who use torture and ill-treatment when interrogating detainees.

Breaches of legal requirements

The Code of Criminal Procedures clearly states that a representative of the Public Ministry has to be present in all police proceedings.¹⁷ The anti-"terrorism" legislation states that both a representative of the Public Ministry and a lawyer for the defendant must be present during the pre-trial investigation.¹⁸ Yet, according to reports, 87 per cent

¹⁵ UN Doc. E/CN.4/1995/34, para 930.

¹⁶ Article 13.c of Decree Law N° 25475 reads: "During the pre-trial investigation period and the trial those who took part in the elaboration of the police report cannot be called as witnesses" (Unofficial translation by Amnesty International). "*En la Instrucción y en el Juicio no se podrán ofrecer como testigos a quienes intervinieron por razón de sus funciones en la elaboración del Atestado Policial.*"

¹⁷ Article 91 of the Peruvian Code of Criminal Procedures reads: "A member of the Attorney General's office must be present in all the proceedings. His/her presence must be compulsory." (Unofficial translation by Amnesty International). "*A todas las diligencias de la instrucción deberá citarse al Ministerio Público, su concurrencia es obligatoria.*"

¹⁸ Article 12 f of the Decree Law N° 25475 modified by Law N° 26447 states that: "the presence of both a representative of the Public Ministry and a lawyer for the defendant during the police questioning is compulsory" (Unofficial translation by Amnesty International) "*La presencia del abogado defensor y del representante del Ministerio Público en la manifestación policial del presunto implicado.*"

of detainees held on “terrorism”-related offences stated that no member of the Public Ministry was present when they were being questioned.¹⁹

The police in Peru often use securing a confession as their sole investigation technique. With the detainee held incommunicado and with no representative of the Public Ministry office present, they frequently give in to the temptation to use force.

The use of confessions extracted under duress as evidence

¹⁹ See *Instituto de Defensa Legal* report, *¿Quiénes son los Inocentes?*, 1997, p. 23.

Confessions extracted through torture or ill-treatment have frequently been admitted as evidence in court, even if the accused has later withdrawn the confession and claimed that it was signed under duress. Confessions used in court as evidence are not withdrawn from the consideration by the judge and jury, even when there is evidence that they were obtained through torture or ill-treatment. Police officers continue to rely on the use of force to obtain evidence from detainees to secure a prosecution.²⁰ In more than 180 of the 500 cases of people unfairly convicted of “terrorism”-related offences who were pardoned during the 1990s, the defendants had told the trial court that they had been tortured or ill-treated. In none of these cases were judicial investigations opened to investigate their allegations and in each case the disputed evidence was admitted in court.²¹

The use of statements obtained under torture is prohibited by Article 15 of the Convention Against Torture and by Article 10 of the Inter-American Convention to Prevent and Punish Torture²², ratified by Peru in 1988 and 1991 respectively. The Inter-American Commission on Human Rights of the Organization of American States (OAS) recommended in its Annual Report for 1996 “to the Peruvian judicial authorities that they reject any confessions obtained through torture”.²³

²⁰ See the report of the Coordinadora Nacional de Derechos Humanos, *Análisis de la Problemática de la Tortura en el Perú*, 1999, p. 57.

²¹ See the Peruvian Ombudsman’s Offices’s report, *La labor de la Comisión Ad-hoc a favor de los inocentes en prisión*, 2000, p. 63.

²² Article 15 of the Convention Against Torture says: “Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made”. Article 10 of the Inter-American Convention to Prevent and Punish Torture says: “No statement that is verified as having been obtained through torture shall be admissible as evidence in a legal proceeding, except in a legal action against a person or persons accused of having elicited it through acts of torture, and only as evidence that the accused obtained such statement by such means”.

²³ See Inter-American Commission on Human Rights Annual Report 1996, Ch. V.II.

In 35 per cent of the cases of people unfairly convicted of “terrorism”-related offences and later pardoned, the police pre-trial investigation report did not have the signature of either a member of the Attorney General’s office or the defendant’s lawyer.²⁴ In 67 per cent of these cases, the only evidence against the accused was the report of the pre-trial investigation by the police. These figures indicate the decisive influence of the police report in securing convictions in cases of “terrorism”-related offences.²⁵

This reliance on the police report, especially in “terrorism”-related cases, has undermined the role of the judicial pre-trial investigation. Public prosecutors and judicial officials place the whole responsibility for investigation onto the police, increasing the pressure on them to obtain results.

Armed forces and law enforcement

In the context of the internal armed conflict, the armed forces took over tasks usually reserved to the police, particularly in rural and isolated areas. The 1992 anti-“terrorism” law states in Article 12 that the armed forces may detain suspects only in areas where there is no police station and that detainees should be immediately taken to the closest police station for investigation.²⁶ In practice, however, members of the armed forces have reportedly often questioned suspects before handing them over to police custody. This practice reportedly continues, particularly in the eastern part of the country where Shining Path remains active and drug trafficking has been reported.

Recent reforms

²⁴ See the Peruvian Ombudsman’s Offices’s report, *La labor de la Comisión Ad-hoc a favor de los inocentes en prisión*, 2000, p. 63.

²⁵ See the Peruvian Ombudsman’s Offices’s report, *La labor de la Comisión Ad-hoc a favor de los inocentes en prisión*, 2000, p. 60.

²⁶ Article 12.a of the Decree Law N° 25475 which defines the crime of “terrorism” states: “In those places where there is not the presence of the National Police of Peru the arrest and detention of those suspected of this crime will be carried out by the Armed Forces who will take the detainees to a police station immediately to undertake the relevant investigation.” (Unofficial translation by Amnesty International). *“En los lugares en que no exista dependencia de la Policía Nacional del Perú, la captura y detención de los implicados en estos delitos corresponderá a las Fuerzas Armadas, quienes los pondrán de inmediato a disposición de la dependencia policial más cercana para las investigaciones a que hubiera lugar”.*

In recent months, the Peruvian government has taken some measures to bring the 1992 anti-terrorism legislation and the 1998 law on “aggravated terrorism” into line with international standards. For instance, the authorities have given retrials to some civilians previously tried in military courts.²⁷ There are signs that the new Peruvian Congress might review the 1992 anti-“terrorism” legislation. Moreover, on 29 November 2001 the Constitutional Tribunal ruled that the 1998 “Law against aggravated terrorism” was unconstitutional because, according to the Constitution of Peru, civilians cannot be tried by military courts. At least 1,500 people were tried and condemned under this legislation and are currently awaiting a retrial in civilian courts. The law, however, has not yet been repealed.

Amnesty International welcomes the steps taken by the Peruvian authorities to bring both laws into line with international standards. However, the organization remains concerned that the 1992 anti-“terrorism” legislation remains in place and, despite the retrial of a handful of civilians previously tried in military courts, police officers who took part in their interrogations still cannot be questioned. This continues to violate the right of the detainees to have an adequate defence and to have evidence obtained through torture excluded.

2. Two decades of impunity

During the last two decades, Peru’s population has suffered widespread human rights violations and has been denied the right to a remedy for these grave violations. The “institutionalization of impunity in Peru [is one of] the main problems with regard to [a lack of respect for] the right to life”, stated the UN Special Rapporteur on extrajudicial, summary or arbitrary executions after a visit in 1993. In mid-1995 the Peruvian authorities took forward this “institutionalization of impunity” by ensuring that impunity entered into law. Two Amnesty Laws came into effect in mid-1995 which granted immunity from prosecution to all perpetrators of human rights violations committed between 1980 and 1995.²⁸ Since then, human rights violations have continued to go unpunished.

²⁷ Since November 2000 when ex-President Alberto Fujimori left office, the Peruvian authorities have implemented some of the rulings of the Inter-American Court of Human Rights on cases of people charged with the “terrorism”-related crime of “treason” and retried them under civilian courts. These cases include the retrial in a civil court of the American citizen, Lori Berenson, and the starting of a new trial for four Chilean citizens (Jaime Castillo Petruzzi, Lautaro Mellado Saavedra, María Concepción Pincheira Sáez, Alejandro Astorga Valdez) all of them sentenced by a military court to life imprisonment for the terrorism-related crime of “treason” for their participation in the armed opposition group MRTA.

²⁸ On 14 June 1995 the Peruvian Congress passed an amnesty law –Law N°26479 – which granted a general amnesty to all those members of the security forces and civilians who were the subject of a

Amnesty International believes that the lack of effective investigation and prosecution of human rights violations has contributed to a culture of disregard for the human rights of the civilian population among the security forces.

Amnesty International has urged successive Peruvian governments to abide by their obligations as a state party to international human rights treaties which prohibit the use of torture and ill-treatment. These require the authorities to send a clear message to all members of the security forces and prison guards that torture will not be tolerated under any circumstance. They also require the authorities to investigate all allegations of torture, prosecute alleged perpetrators in an independent and impartial court of justice and offer adequate reparation to the victims.

Opportunities to combat impunity

complaint, investigation, indictment, trial or conviction, or who were serving prison sentences, for human rights violations committed between May 1980 and June 1995. Following the promulgation of this amnesty law, the judge in charge of investigating a November 1991 massacre in Lima argued that the law was inapplicable to this case. However, on 28 June 1995, before her ruling reached the High Court for ratification or veto, Congress passed a second Amnesty Law –Law N°26492-- which prohibits the judiciary from ruling on the legality or applicability of the amnesty law.

In March 2001, a window of opportunity to end impunity opened in Peru following a ruling by the Inter-American Court of Human Rights of the Organization of the American States on the case of a massacre which took place in Barrios Altos, Lima, in 1991.²⁹ The ruling by the Inter-American Court states that the Peruvian amnesty laws have no “judicial validity” and cannot continue to be an obstacle to the investigation and identification of the perpetrators of this or any other human rights violations.³⁰ After this ruling the Peruvian authorities reopened investigations into the Barrios Altos case.

In addition, on 3 September 2001, the Inter-American Court published a further interpretation of the Barrios Altos ruling which clarified that the amnesty laws cannot be enforced in any other cases of human rights violations.³¹ This has increased the scope to tackle impunity in Peru as it removes the legal obstacle preventing human rights violations committed between 1980 and 1995 from being investigated, perpetrators being brought to justice and victims being offered appropriate redress. Thousands of cases of torture and ill-treatment of detainees occurred between 1980 and 1995.

In June 2001, the Peruvian authorities established by decree law a Truth Commission to investigate allegations of human rights abuses committed by the state and the two armed opposition groups between 1980 and November 2000. The Truth Commission will investigate cases of torture and ill-treatment, among others.

Amnesty International believes that the establishment of the Truth Commission is an opportunity for the Peruvian authorities to end impunity in Peru. Furthermore, the organization believes that this will send a clear message to the perpetrators of these crimes that this practice is not only illegal, but will no longer be tolerated in Peru.

3. Torture and ill-treatment since February 1998

Since February 1998, when the Peruvian Congress passed Law N° 26926, criminalizing the use of torture, Amnesty International has documented scores of cases of torture and ill-treatment committed by the security forces.

²⁹ In 1991, 15 people, including a child, were killed by a military detachment within the National Intelligence Service, known as *Grupo Colina*, while they were holding a party in Barrios Altos, a neighbourhood in Lima. The military suspected them to be members of Shining Path.

³⁰ See Barrios Altos case (*Chumbipuna Aguirre and others vs. Peru*) Judgment of 14 March 2001, para. 44.

³¹ See Barrios Altos case (*Chumbipuna Aguirre and others vs. Peru*) Interpretation of Judgment of 3 September 2001, para. 14.

Torture methods documented by Amnesty International in Peru in the last four years include: electro-shock torture, asphyxiation, submerging the detainee's head in water or water with salt or chilli peppers, beatings, punches, kicks, being stamped on, being forced to strip naked, sexual abuse including rape, being denied water or food for days and psychological torture.

The vast majority of cases documented since torture became a punishable offence in Peru remain unpunished. In only two cases have perpetrators been brought to justice. Of these two cases, in only one case has the victim received compensation.³² In the second case, legal proceedings have been initiated to enforce the payment of the compensation to the victim's family.³³

Amnesty International believes that the continuing use of torture since it was criminalized is due to a number of factors, including: the use of military courts to try those charged with torture and ill-treatment; failure to implement the law that criminalizes torture; the lack of independent investigations into allegations of torture; the harassment and intimidation of victims of torture and their relatives, witnesses and lawyers; and the lack of proper training in the medical profession.

Military courts

Cases in which perpetrators of torture and ill-treatment are to be tried continue to be transferred to military courts. The 1998 law which criminalizes torture clearly states that such cases should be tried in civilian courts,³⁴ but this is often disregarded.

Under the military justice system alleged perpetrators of torture are frequently charged with lesser offences, such as "abuse of authority". According to reports, military courts often initiate investigations into allegations of torture when the accused is a member of the police or the armed forces and the case is already before a civilian court. This creates a dispute regarding jurisdiction between civilian and military courts which has to be solved in the Supreme Court and delays the legal process.

Reports received by Amnesty International indicate that public prosecutors have on occasions ignored or not implemented the law against torture and have refused to

³² See the case of Huber Méndez Barzola below.

³³ See the case of Pablo Pascual Espinoza Lome below.

³⁴ Article 5 of the Law N° 26926 states that: "all crimes to which Title XIV -A refers to (crimes against humanity: genocide, forced "disappearance", and torture) will be dealt within the civilian justice system in a civilian court". (Unofficial translation by Amnesty International). "*Los delitos a que se refiere el Título XIV - A (delitos de lesa humanidad: genocidio, 'desaparición' forzada y tortura) se tramitarán en la vía ordinaria y ante el fuero civil*".

continue judicial proceedings in cases of torture when military courts are already investigating the case. In addition, magistrates in civilian courts have ruled in favour of cases being tried in military courts when there is a dispute over jurisdiction.

According to the UN Special Rapporteur on torture, the trial of members of the security forces in the military justice system “make[s] no sense at all in cases where members of the security forces have seriously violated a civilian’s basic human rights. Such an act is an offence against the public civil order and, consequently, should be tried by a civilian court”.³⁵

Back in 1996, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions expressed concern about “trials of members of the security forces before military courts where it is alleged, they evade punishment because of an ill-conceived *esprit de corps*, which generally results in impunity.” He cited countries such as Colombia, Indonesia and Peru as well-known examples. By contrast, the Special Rapporteur welcomed jurisprudence in Brazil which established that cases involving crimes against children are to be tried by civilian tribunals, even if the alleged perpetrators are military officers.³⁶

Failure to implement domestic legislation

Some officials in the criminal justice system on occasions fail to implement the 1998 anti-torture law when dealing with complaints of torture and ill-treatment. For instance, in some cases prosecutors fail to bring charges using the 1998 legislation and alleged perpetrators are charged with less serious offences. Human rights organizations in Peru have reported to Amnesty International that prosecutors tend to file charges for “grave injuries” (*lesiones graves*), rather than for the crime of torture. They appear to give undue weight to the extent of the victim’s injuries and to disregard the intention behind the crime, which is to inflict mental or physical pain or suffering as a way to obtain a confession, punish, intimidate and coerce the victim. Furthermore, there are reports that some prosecutors remain ignorant of the fact that there is a law in force which criminalizes torture.

No independent investigations

According to the information received by Amnesty International, prosecutors rely heavily on the police to undertake pre-trial investigations. As a result, in many instances,

³⁵ UN Doc. E/CN.4/1990/12, *Infra*. 271, p.83.

³⁶ Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc. A/51/457, at para 125, 7 October 1996.

members of the same police unit as the alleged perpetrators are in charge of investigating torture allegations.

In the majority of torture cases, the evidence presented in court by prosecutors has reportedly consisted solely of that obtained during the police pre-trial investigation. For example, in the case of Carlos López Flores featured below, the Public Ministry put the *División Nacional de Investigación Criminalística* (DIVINCRI), Division of Criminal Investigation, in charge of the investigation. However, the police officers who allegedly tortured Carlos López Flores to death were members of the same police department. In the case of Jorge Jerí Juscamaita, also featured below, the pre-trial investigation was placed in the hands of the National Police, despite the fact that a National Police officer was a suspect in this case of torture.

Amnesty International believes that the Peruvian authorities must ensure that all allegations of torture are investigated impartially, independently and thoroughly. This requires implementation of the UN Human Rights Committee recommendation that “all complaints of misconduct by members of the security forces be investigated by an independent body and not by the security forces themselves”.³⁷

Harassment and intimidation of victims

Victims of torture, their relatives and lawyers, have been harassed and intimidated to force them to drop charges. In some of these cases, according to information received by Amnesty International, no action has been taken by the authorities to protect the victims of such threats. Threats against victims of torture who file complaints often take place while the victim is in custody and continue after release.³⁸

Amnesty International believes that the lack of effective investigation into such threats and the fact that perpetrators are not brought to justice discourages victims from filing complaints and encourages the perpetrators to believe they can commit their crimes with impunity. The failure to prevent intimidation therefore nurtures the circle of impunity where human rights abuses go unpunished.

Suspension from duty

The UN Special Rapporteur on torture has recommended that: “unless the allegations of torture are manifestly ill-founded, those officers involved should be suspended from their duties pending the outcome of the investigation and any subsequent legal or disciplinary

³⁷ Concluding Observations of the Human Rights Committee: Brazil. 16/09/96. CCPR/C/79/Add. 66;A/51/40, para. 327

³⁸ See the cases of Jenard Lee Rivera San Roque, Frank Romero Arrieta, Carlos López Flores, Juan Carlos Garay Pereyra and Elisa Rivera Toribio below for an illustration of this concern.

proceedings”.³⁹ In Peru, this is rarely the case. Apparently officers accused of torture remain in active service until they have been formally sentenced.

³⁹ See E/CN.4/2001/66/Add.2, para. 168 j.

Amnesty International has received very worrying reports that members of the security forces accused of torture have been transferred or even promoted to a higher rank, instead of being investigated and brought to justice.⁴⁰ Amnesty International believes that this practice sends the wrong message to perpetrators, to victims and to officers committed to respecting the fundamental rights of the citizens they serve. Instead of promoting good practice and professionalism within the security forces, this practice demoralizes and discourages officers who obey the law and respect human rights while carrying out their duties.

The medical profession

The attitude of forensic doctors and their lack of proper training have also been identified as obstacles to successful prosecutions in torture cases. In some instances, forensic doctors reportedly fail to identify victims' injuries as resulting from torture, leading to the collapse of judicial cases. Article 321 of the Penal Code, incorporated by the anti-torture law, states that torture causes "grave pain or suffering, physical or mental". As a result, if doctors do not identify injuries as "grave", they often conclude that such injuries do not amount to torture. The perpetrators are then charged with a lesser offence, such as abuse of authority.

Human rights organizations in Peru have reported to Amnesty International that in none of the cases documented by them since 1998 have doctors applied the guidelines that should be followed when documenting cases of torture, as set out in the Peruvian *Protocolo de Reconocimiento Médico Legal Para la Detección de Lesiones o Muertes Resultante de Torture*, Protocol of Medical Examination for the Detection of Injuries or Death as a Result of Torture. According to Article 2 of Appendix 3 of the 1998 anti-torture law, implementation of this Medical Protocol is compulsory.⁴¹

Amnesty International believes that all doctors and other medical practitioners should be informed of the existence of a medical protocol to document cases of torture, and should be made aware of their legal duty to apply this protocol whenever relevant. Amnesty International urges the authorities to set up training programs for doctors and other

⁴⁰ See the cases of Moisés Pacco Mayhua and Nazario Victor Valencia Porras below for an illustration of this concern.

⁴¹ Article 2 of Appendix 3 reads: "The Protocol of Medical Examination for the Detection of Injuries or Death as a Result of Torture' [...] is of obligatory implementation by all Legal Physicians' Divisions of the Institute of Legal Medicine and of the Public Ministry within the national territory". (Unofficial translation by Amnesty International). "«El Protocolo de Reconocimiento Médico Legal para la Detección de Lesiones of Muerte Resultante de Tortura» [...] es de uso obligatorio en todas las Divisiones Médico Legales del Instituto de Medicina Legal y del Sistema Fiscal, a nivel nacional".

medical practitioners to make sure that they are properly trained on how to identify torture injuries, internal, external and psychological.

4. Torture and ill-treatment by the police and armed forces

The cases described in this report illustrate Amnesty International concerns regarding torture and ill-treatment of detainees by the Peruvian police and military. In many cases reported to Amnesty International, victims subsequently withdraw their allegations for fear of reprisals, or because they are facing trial and fear that their complaints could jeopardize their case. At the time of writing, all the cases cited in this report were open. Amnesty International urges the Peruvian authorities to show real commitment to the promotion and protection of human rights by investigating these cases promptly, independently and impartially, by bringing perpetrators to justice and by taking effective measures to prevent such acts from happening again.

In most of the torture and ill-treatment cases documented by Amnesty International in the last three years, detainees were subjected to torture and ill-treatment by police officers to force them to confess to the crimes of which they had been accused. These confessions would later be employed in court as evidence against the accused. Amnesty International has also received reports of detainees being tortured or ill-treated in police custody as punishment.

Amnesty International is also seriously concerned about continued reports of torture and ill-treatment of detainees suspected of “terrorism”-related offences by members of the armed forces. Again, torture is used either as a method of punishment or as a way of obtaining information or a confession. These cases demonstrate that the armed forces continue to take part not only in the detention of civilians, but also in the investigation of cases involving civilians. This practice is contrary to Peruvian law.

Procedural irregularities

Police and military personnel involved in arrests, detentions and interrogations of detainees not only concentrate on extracting confessions rather than securing scientific evidence, but also reportedly fail to keep proper records of the times of arrests, releases and interrogations of suspects.⁴² This failure to keep proper records is contrary to Principle 12 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁴³ and contrary to Principle 7 of the UN Standard

⁴² See the case of Nazario Victor Valencia Porras below for an illustration of these irregularities.

⁴³ Principle 12.1 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states: “there shall be duly recorded: (a) The reasons for the arrest; (b) The time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or

Minimum Rules for the Treatment of Prisoners.⁴⁴ According to human rights organizations in Peru, this failure to keep records also impedes lawyers' investigations into allegations of torture.

Other procedural irregularities include police officers making arrests without arrest warrants,⁴⁵ refusing to identify themselves when carrying out arrests, and failing to register the name of a detainee on arrival at a police station.⁴⁶ In some instances police officers have taken detainees to a hospital seriously injured, allegedly as a result of torture, and have refused to identify themselves or to name the detainee.⁴⁷

All these practices put detainees in a very vulnerable position and undermine pre-trial investigations. They also impede investigations into allegations of torture, as they prevent lawyers and prosecutors establishing when the victim was in custody.

Amnesty International is also extremely concerned at reports received in recent months that detainees have been denied access to a doctor when held in police custody, even when the detainee had lodged a complaint of torture.⁴⁸

Reports of police officers threatening detainees to sign statements saying that they were not subjected to any kind of torture and ill-treatment in police custody have persisted.⁴⁹ Amnesty International has also received information about cases where police officers

other authority; (c) The identity of the law enforcement officials concerned; (d) Precise information concerning the place of custody." Article 12.2 states: "Such records shall be communicated to the detained person, or his counsel, if any, in the form prescribed by law".

⁴⁴ Principle 7.1 of the UN Standard Minimum Rules for the Treatment of Prisoners states: "In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received: (a) Information concerning his identity; (b) The reasons for his commitment and the authority therefore; (c) The day and hour of his admission and release." Article 7.2 states: "No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register".

⁴⁵ See the case of Roxana González Miura, Walter Muñárriz, Simial Reyes Salgado (13 years old) and Aldo Mercedes Silvestre Ramírez below for an illustration of this concern.

⁴⁶ See the case of Walter Muñárriz, Rosmel Arias Condor (16 years old), Nazario Victor Valencia Porras, Roxana, González Miura, Jerard Lee Rivera San Roque and Aldo Mercedes Silvestre Ramírez below for an illustration of this concern.

⁴⁷ See the case of Nelson Díaz Marcos below.

⁴⁸ See the case of Roxana González below.

⁴⁹ See the case of Moisés Pacco Mayhua below.

have made false statements claiming that the victim's injuries were the result of an escape attempt or caused by resistance offered during arrest.⁵⁰

Special Commission

The officially appointed *Comisión Especial de Reestructuración de la Policía Nacional del Perú*, Special Commission for the Restructuring of the National Police of Peru, published its report in February 2002. The Special Commission carried out an in-depth evaluation to identify the main strengths and weaknesses within the police. Its recommendations included a complete reform of recruitment, training, refresher training and professionalization of police officers.

Amnesty International, which welcomed the establishment of the Special Commission, recommends that police training should include training on human rights, interrogation techniques, investigation techniques, crime scene handling, basic forensic knowledge and when it is appropriate to use of force according to human rights principles. In addition to training, the police should be given the resources needed to be able to do their job without resorting to human rights violations in order to obtain "results". Since the Special Commission published its report, the government of President Alejandro Toledo has earmarked \$US 15 million to improve the infrastructure of all police stations. Amnesty International will be monitoring the results of this investment, to determine whether it results in the protection and promotion of the fundamental human rights of those detained by the police.

5. Torture and ill-treatment in prisons

Amnesty International has received reports in recent years of prisoners being tortured and ill-treated by prison guards as a way of punishment. The UN Minimum Rules for the Treatment of Prisoners state in Article 31: "Corporal punishment, punishment by placing in a dark cell and all cruel inhuman and degrading punishment shall be completely prohibited as punishments for disciplinary offences".

⁵⁰ See the case of Carlos López Flores below.

Amnesty International has received allegations that prisoners have been beaten with blunt objects, punched, forced to strip naked, soaked with cold water and left naked and wet in the cell, psychologically ill-treated and sexually abused. Those who complain about such abuses are often punished by being placed in isolation cells or threatened with transfer to a different prison or wing.⁵¹ As a result, many complaints are withdrawn.

It is often difficult for prisoners to make a complaint about their treatment because the perpetrators are the very prison guards in whose custody they are. The fear of reprisals or loss of rights or privileges means that very few complaints are made and even fewer perpetrators punished. Human rights lawyers in Peru state that the code of silence and “corporativism” within the prison system often makes it very difficult to investigate such cases and bring perpetrators to justice.

Cruel, inhuman and degrading conditions

Amnesty International has for many years expressed grave concern about the prison conditions in maximum security prisons where those charged with “terrorism”-related offences are held. Conditions in these prisons remain harsh and in some circumstances amount to cruel, inhuman and degrading treatment. For instance, Challapalca prison in Puno department remains operational despite calls from the Inter-American Commission on Human Rights and international non-governmental organizations, including Amnesty International, for it to be closed permanently. The prison is more than 4,600 metres above sea level, and is extremely cold. The inaccessibility of the prison seriously limits prisoners’ right to maintain contact with the outside world, including relatives, lawyers and doctors.

In September 2001, some 30 political prisoners were transferred to Challapalca prison, and at the time of writing were still held there. The prisoners were transferred from the high security prison of Yanamayo in Puno department, where they had taken control of a wing.

⁵¹ See Elisa Rivera Toribio’s case below for an illustration of this.

Many prisoners were sentenced to at least 20 years in jail under the 1992 anti-“terrorism” legislation, which provides for prison sentences ranging between six years and life. Under this legislation a new and stricter penitentiary regime was established for prisoners convicted of “terrorism”-related offences. For example, until June 1999 those convicted of crimes of “terrorism” and “treason” were to remain locked in their cells continuously and isolated from other prisoners during the first year of their prison sentence.⁵² Since June 1999 these prisoners have been allowed one hour per day in the prison yard during their first year of imprisonment. Since 1998 those convicted of “aggravated terrorism” have been confined in their cells continuously, isolated from other prisoners, during the first year of their prison sentence.⁵³ Amnesty International believes that the confinement of prisoners in total isolation for a period of one year, which existed until June 1999, constitutes cruel, inhuman and degrading treatment.

The organization is also concerned about administrative practices that fall below minimum acceptable standards for the treatment of prisoners. These practices included restricting visits to 10 minutes per month; allowing visits to numerous prisoners simultaneously so that prisoners and visitors had to shout at each other in order to be heard through the closely-meshed metal barriers that separated them; and prohibiting prisoners from having a radio, newspapers, writing materials and books.

In 1997 the guidelines for the treatment of prisoners charged with or convicted of crimes of “terrorism” were reformed by Supreme Decree No. 005 - 97 -JUS. The new regulations included improvements on family visits and an extension of daily exercise from 30 to 60 minutes. However, the regulations explicitly excluded prisoners held in military prisons. Amnesty International welcomed this reform, but was concerned about the way prisoners were to be evaluated in order to be eligible for improved prison conditions. Amnesty International delegates visited the *Establecimiento Penal de Máxima Seguridad de Mujeres, Chorrillos*, High Security Prison for Women, Chorrillos, in Lima in September 1998. They noted that according to the director’s interpretation of “good behaviour”, prisoners who maintained their political beliefs would not enjoy the better conditions that the new decree stipulated. The benefits included a longer exercise period

⁵² Article 20 of Decree Law 25,475 read until June 1999: “Under this Decree Law, during the first year of detention or imprisonment punishment will be compulsorily served in a maximum security prison in solitary confinement” (Unofficial translation by Amnesty International). *“Las penas privativas de libertad establecidas en el presente Decreto Ley se cumplirán, obligatoriamente, en un centro de reclusión de máxima seguridad, con aislamiento celular continuo durante el primer año de su detención.”*

⁵³ Article 9 of Decree N° 895 reads: “The sentences given under this Legislative Decree will be served in a maximum security prison ... in total solitary confinement during the first year of the sentence.” (Unofficial translation by Amnesty International) *“Las penas privativas de libertad establecidas en este Decreto Legislativo se cumplirán obligatoriamente, en un centro de reclusión de máxima seguridad ... con aislamiento celular continuo durante el primer año de la condena”.*

in the prison yard, as well as extended visiting times and physical contact with relatives during visiting times.

Amnesty International has not visited high security prisons since ex-President Alberto Fujimori left office. However, the organization remains concerned that political prisoners who have not renounced their political beliefs continue to be ill-treated. In January 2002, Amnesty International wrote to the Peruvian authorities expressing serious concern about the transfer of some female political prisoners. Lori Berenson, Nancy Gilvonio and other political prisoners were reportedly ill-treated by police officers as they were transferred from the Chorrillos Maximum Security Prison for women in Lima to Cajamarca prison in Cajamarca Department on 21 December 2001. Lori Berenson subsequently filed a complaint of sexual abuse against the police officers involved in the transfer.

Prison protests

Since 2000, when the government of ex-President Alberto Fujimori started to crumble, inmates in high security prisons across Peru have organized hunger-strikes and staged uprisings. The latest of these was a hunger strike by more than 600 political prisoners, the majority of them from Castro Castro Prison in Lima, which started on 11 February 2001. The political prisoners are demanding the annulment of current “anti-terrorism” legislation; new fair trials; the speeding up of the judicial process so that prisoners are not held for years without their trial being completed; the closure of Yanamayo and Challapalca Prisons; and the closure of the prison at the Naval Base of Callao where leaders of Shining Path and the MRTA have been imprisoned since 1992.

Amnesty International fears that the situation in high security prisons might lead the Peruvian authorities to use excessive force to regain or retain control.

6. Torture and ill-treatment of military personnel in military bases and barracks

Since 1999, Amnesty International has received reports of cases of torture and ill-treatment of military conscripts, including deaths in suspicious circumstances.⁵⁴ In these cases, torture and ill-treatment are reportedly used by higher-ranking officers to punish and discipline lower-rank personnel.⁵⁵

⁵⁴ See the cases of Marino Fernández Sánchez and Frank Alfredo Arrieta below

⁵⁵ The UN Committee against Torture has expressed its concern about this particular group of victims of torture and ill-treatment, see A/55/44, para. 91, 5 May 2000.

Methods reported include: beatings; having the head submerged in water mixed with detergent; being burned with cigarettes, being held in incommunicado detention for days; being given little or no food; threats and psychological abuse.

Victims often feel unprotected and fear making complaints. As a result, some victims apparently suffer ill-treatment for long periods before raising the alarm. Fear of reprisals also means that formal complaints are often withdrawn. The code of silence in the military makes the investigation of such cases difficult, even if the victim decides to persist with the complaint. As a result, the number of complaints that actually reach the courts is very small. In general, these complaints are investigated by the armed forces themselves, and in the few cases that lead to prosecutions, the cases are heard by military courts.

Amnesty International is seriously concerned about the torture and ill-treatment of military personnel, and particularly about the fact that most are tried in military courts where perpetrators are charged with the lesser offence of “abuse of authority” instead of torture. The organization strongly recommends that all military judges be instructed that cases of torture should be dealt with by civilian courts as stated in the 1998 anti-torture law. According to reports members of the military continue to reject petitions by public prosecutors to pass cases of torture over to the civilian justice system.

It is particularly important to break patterns of abuse and malpractice within the armed forces. To do this, it is imperative to strengthen the line of command responsibility to detect and end abuses if they take place, to break the code of silence and to address the apparent unwillingness of military officers to investigate or testify against their colleagues.

7. When the victim is a child

Even children and adolescents have been tortured and ill-treated by members of the security forces in Peru in the last three years. Cases reported to Amnesty International include sexual abuse and deaths in custody. In the majority of these cases the victims were adolescent boys aged between 13 and 17. Most were detained on suspicion of “terrorism”-related offences or “aggravated terrorism”. In fact, one of the main reasons for passing a law against “aggravated terrorism” was to curb youth gangs.

Reported torture methods used against children and adolescents in the last few years include beatings and other physical ill-treatment, threats and sexual abuse.

Amnesty International is extremely concerned that when children are arrested or detained they are inadequately protected. According to reports, children are sometimes held in custody in police stations together with adults, a practice which can endanger the child's well-being. Reportedly, this sometimes occurs because police officers do not check the detainee's age, sometimes because a judge has ordered the provisional detention of a minor in a detention centre for adults, pending confirmation of age by a doctor.⁵⁶

Holding children in custody together with adults violates Article 211 of the 1993 *Código Penal de los Niños y Adolescentes*, Peruvian Code of Children and Adolescents, which states that children over the age of 12 may be detained, but must be kept separate from adults.⁵⁷ The practice also violates Article 37.c of the UN Convention on the Rights of the Child.⁵⁸ The detention of children and adolescents in centres for adults persists apparently because of the lack of juvenile detention centres in the country.

⁵⁶ Article I of the preliminary title of the Code of Children and Adolescents states: "A minor should be considered a child from his/her conception until the age of 12, and an adolescent from the age of 12 until 18 years old. If there is any doubt about the age of the person, he/she will be considered a child or adolescent until his/her age has been established". (Unofficial translation by Amnesty International). "*Se considerará niño a todo ser humano desde su concepción hasta cumplir los 12 años de edad y adolescente desde los 12 hasta cumplir los 18 años de edad. El Estado protegerá al concebido para todo lo que le favorece. Si existiera duda acerca de la edad de una persona se le considerará niño o adolescente mientras que no se pruebe lo contrario*".

⁵⁷ Article 188 of the Peruvian Penal Code for Children and Adolescents reads: "Adolescents in detention will be separated from adults" (Unofficial translation by Amnesty International). "*Los adolescentes privados de su libertad permanecerán separados de los adultos detenidos*".

⁵⁸ Article 37.c of the UN Convention on the Rights of the Child reads: "... every child deprived of his or her liberty shall be separated from adults unless it is considered in the child's best interest not to do so ...")

Moreover, according to the Peruvian Penal Code for Children and Adolescents, children under 12 who are charged with a crime are entitled to special treatment to ensure they are properly protected.⁵⁹ There is no provision in the Code for children under 12 to be held in police custody or in detention. However, children as young as 11 have been taken into police custody to be questioned on charges of theft. Some children have been detained without arrest warrants.

Police sometimes question children without the presence of a legal representative and without the knowledge of the child's parents or guardians, and subject the child to pressure and coercion during interrogation. As the cases in this report show, the police rely heavily and, on occasions, solely on the extraction of confessions to secure convictions.

Police officers have also reportedly ill-treated and tortured children and adolescents in detention to punish them for crimes they were thought to be involved in.⁶⁰ Threats and harassment against children and adolescents whose parents file complaints of torture reportedly continue and such acts are very rarely investigated or punished.⁶¹

8. Conclusions and Recommendations

Amnesty International considers that torture and ill-treatment continues to be a serious problem in Peru. The government of President Alejandro Toledo should take this opportunity to ensure that all Peruvians can live free of violence perpetrated by the state.

⁵⁹ The Peruvian Penal Code for Children and Adolescents (*Código Penal de los Niños y Adolescentes*) states that children under 12 are entitled to special protection. Article 242 of this Code states that children under 12 years old charged with a crime are entitled to protection. The judicial authorities must take special measures to protect them, such as care in the child's own house under supervision by special institutions in charge of children's protection; care in an official protection program with educational, medical and social attention; care in a substitute family; attention in a special protection place. (Unofficial translation by Amnesty International). (Article 242 reads: "Al niño que comete infracción a la ley penal le corresponde las medidas de protección. El juez especializado podrá aplicar cualquiera de las siguientes medidas: a) El cuidado en el propio hogar para lo cual se orientará a los padres o responsables para el cumplimiento de sus obligaciones, contando con apoyo y seguimiento temporal de por Instituciones de Defensa; b) Participación en un Programa oficial o comunitario de Defensa con atención educativa, de salud y social; c) Incorporación a una familia substituta o colocación familiar; d) Atención Integral en un establecimiento de protección especial."

⁶⁰ See the cases of Alejandro Ticlavilca Huere and underage boy Simial Reyes Salgado below.

⁶¹ See the cases of Huber Méndez Barzola and Luis Alberto Taipe Huamaní below.

The organization urges the Peruvian authorities to take the necessary steps, including the recommendations listed below, to ensure that torture and ill-treatment are eradicated in practice.

Amnesty International urges the Peruvian authorities to close permanently Challapalca prison and repeal the 1995 Amnesty laws.

In addition, the organization urges the authorities to review the 1992 anti-"terrorist" legislation in order to bring it into line with international standards and ratify articles 21 and 22 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment. The ratification of such articles would allow Peruvian citizens to bring their case before the UN Committee against Torture.

a. Recommendations to the police and other law enforcement officials

- The police and other security forces should be given the resources and training necessary to enable them to carry out their duties without resorting to torture and ill-treatment.
- Training programs should include:
 - training in investigation techniques, crime scene handling, basic forensic knowledge and when it is appropriate to use force according to human rights principles;
 - instruction in international standards such as the UN Code of Conduct for Law Enforcement Officials, the UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Rules for the Protection of Juveniles Deprived of their Liberty and the UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"); and
 - guidelines on how to deal with those who need special protection such as women, children, and lesbian, gays, bisexual and transgender groups, as well as those with mental illnesses.
- It is essential that the authorities are unequivocal in their statements to public officials and law enforcement officials that human rights violations such as torture and ill-treatment will not be tolerated under any circumstances and that those committing them will be punished according to the law.

- Law enforcement personnel suspected of or charged with serious human rights abuses, such as torture, should be suspended from active duty pending the outcome of investigations. This can be done without prejudice to their rights to a fair trial. Suspension should amount to the temporary removal from active service and not transfer to an alternative post.
- Any law enforcement official against whom there exists credible evidence of involvement in human rights violations should be investigated and brought to justice.
- Human rights violations committed by the security forces should not only be investigated promptly, effectively, thoroughly and impartially by an independent body, but should be prosecuted in civilian courts, according to international human rights standards.
- Amnesty International recognizes the importance of internal investigation units within the security forces, with regard to internal disciplinary issues and establishing clear codes of conduct within the guidelines. However, the internal investigation unit should play no role in the criminal investigation of allegations of human rights abuses or criminal acts by state agents. In cases where state agents are accused of serious human rights violations the Public Ministry or an investigating judge should have responsibility for conducting the investigation.
- Early warning systems should be established to identify and deal with officers who may be involved in human rights violations, including clear reporting systems and detailed records of every officer's conduct. These records should be available to an independent oversight body.
- All detainees should have access to relatives and a lawyer promptly after arrest and regularly throughout their detention or imprisonment.
- All detainees should also be informed of their rights at the time of their arrest, including the right not to be tortured or ill-treated and the right to file a complaint.
- All interrogations of criminal suspects should take place in the presence of a lawyer. A record of the interview must always be kept and where possible, tape recordings or video recordings of the interview should be made. The defence counsel of any detainee should have access to these records. Records of the arrest and the interview, tape recordings and video recordings of interviews should be made both to protect detainees from abuse and to protect the police from unfounded allegations of improper behaviour.

- There should be a clear and complete separation between those responsible for holding people in detention and those responsible for the interrogation of detainees. This would allow those not involved in interrogation to supervise the welfare and physical security of detainees.

b. Recommendations to the judiciary

- Steps should be taken to ensure that the judiciary has appropriate resources and training to order in-depth and effective investigations into human rights violations and the evaluation of the results.
- Internal court audits should be implemented to ensure that judicial officials understand their duties and carry them out accordingly.
- Specific training instructions should be provided to judges in relation to the exclusion of evidence elicited by torture or ill-treatment, action to be taken on receipt of a complaint of torture or ill-treatment, and the evidential elements necessary in the prosecution of alleged acts of torture or ill-treatment, as well as ensuring the reversal of the burden of proof in cases where there are allegations that a confession was extracted under torture.⁶²
- Judges must ensure that confessions or any evidence obtained as a result of torture are not admissible as evidence in criminal proceedings against the victim. Judges must immediately stop trials where allegations of torture are made, pending a separate investigation into all the allegations, overseen by a different prosecutor.⁶³
- If, following a judicial investigation, there is enough evidence that a statement and confessions were extracted under coercion or torture and ill-treatment, the public prosecutor must initiate judicial proceedings against those allegedly involved in the extraction of such confession or statement.

⁶² The UN Special Rapporteur on Torture has stated that “when allegations of torture or other forms of ill-treatment are raised by a defendant during trial, the burden of proof should shift to the prosecution to prove beyond reasonable doubt that the confession was not obtained by unlawful means, including torture or similar ill-treatment”, UN Doc. E/CN.4/2001/66/Add.2, page 55 and 56, para. 169 (i).

⁶³ The UN Special Rapporteur on Torture has stated that “no statement or confession made by a person deprived of his liberty, other than one made in presence of a judge or a lawyer, should have a probative value in court (...)”. UN Doc. E/CN.4/2001/66/Add.2, page 55 and 56, para. 169 (h).

- All magistrates, public prosecutors and lawyers must be instructed that no confession or statement obtained without the presence of a member of the Public Ministry and the detainee's lawyer can be used as evidence in court.
- The Public Ministry should be open to an external audit in order to ensure that prosecutors are aware of their duties and are carrying them out properly. Information relating to complaints filed, cases investigated, prosecutions mounted and convictions, should also be collated in order to effectively monitor the functioning of the Public Ministry. All prosecutors should receive specific training in prosecuting human rights crimes.
- All magistrates, public prosecutors and lawyers should apply the legislation which criminalizes torture (Law N° 26926).
- All magistrates should be instructed to implement the legislation which criminalizes torture (Law N° 26926) when ruling on cases of torture. Public prosecutors and lawyers should be also instructed to invoke such legislation when charging alleged perpetrators.
- Public defenders must be fully trained in dealing with torture victims and in how to lodge a complaint of torture. Regular evaluations should take place to ensure that public defenders understand their duties and carry them out accordingly, especially when dealing with victims of torture.
- All victims of human rights violations, including detainees, should have access to an effective complaints procedure to register complaints about human rights violations without fear of reprisals. All such complaints should be officially passed to *the Public Ministry* for thorough, impartial and independent investigation.
- Victims' families, legal representatives or human rights defenders working with those held in detention should also be able to register complaints directly with the Public Ministry without any risk of threat or reprisal.
- Victims, relatives of victims, legal representatives or human rights defenders who make complaints must be kept informed of the progress of the complaint and have access to any enquiry or procedure opened as a result of it.
- Steps should be taken to ensure the adequate protection of victims, their relatives, and witnesses of torture, by ensuring a fully funded and effective witness protection scheme.

c. Recommendations to the medical profession

- Detainees should be examined by a doctor upon arrival at the place of detention and on a frequent and regular basis through detention and imprisonment and immediately before and after transfer or release.
- The medical examination of alleged victims of torture or ill-treatment should only be conducted in the presence of independent witnesses; a doctor designated by the victim or their family; the legal representative of the victim; or a professional designated by an independent medical association.
- Doctors working within the justice system and other physicians should be provided with the training and resources necessary for the identification of all forms of torture and other human rights violations.
- The legal and forensic medical service should be well resourced, and doctors and forensic physicians should work independently from the security forces.

d. Recommendations for personnel in charge of prisons and police custody

- It is essential that the authorities review arrangements for the treatment and custody of all prisoners, to ensure that they are treated humanely and in conformity with Peruvian law, as well as with the UN Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, the UN Standard Minimum Rules for the Treatment of Prisoners and the UN Convention on the Rights of the Child.
- Different categories of prisoners should be separated within the detention system, depending on whether they are awaiting trial or sentenced, whether they are serving under an open, semi-open, or closed regime, as well as by seriousness of offence.
- The authorities must ensure that all female detainees and prisoners are held separately from male detainees and prisoners. Male prison staff and male staff in charge of female detainees in police stations should be accompanied at all times by female officers.
- Practices that discriminate against female prisoners and detainees should be abolished.

- The authorities must ensure that every child deprived of his or her liberty is treated with humanity and respect for the inherent dignity of the human person, and in a manner which particularly takes into account the needs of individuals of their age.
- Every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so. When in doubt about the age of young detainees, they should be considered as minors until their age can be confirmed.
- Adequate funding for areas such as staff recruitment, salary, training and monitoring, and the establishment and enforcement of new procedures and codes of conduct for those working within the penal system, are essential.
- A formal and adequately resourced system should be established of periodic visits and inspection of places of detention by an independent body formed by experts, including judges, prosecutors, doctors and lawyers,. Such inspections should include all places of detention, including police lock-ups, pre-trial detention centres, security service premises and prisons. When such inspection occurs, members of the inspection team should be afforded an opportunity to speak privately with detainees. The result of the team's findings should be made public.

9. Cases of torture and ill-treatment

a. Cases of torture and ill-treatment by the security forces

· Nazario Victor Valencia Porras

On 28 June 2001, Nazario Victor Valencia Porras was taken to Matucana police station, Lima Department, on suspicion of robbery. Three days later he was found dead in his cell with apparent signs of having being beaten. According to witnesses, Nazario Valencia was tortured by police officers. He was not taken before a judge during his detention and there was no judicial order for his arrest, despite the fact that he was not detained *en flagrante delicto* (in the act of committing a crime).

On the day after his arrest, 29 June, Nazario Valencia told his nephew who visited him at the police station that he was innocent and was confident that he would be released soon. On 1 July, when Nazario Valencia's sister went to the police station to bring food to her brother, she was told that he had hanged himself in his cell with an electrical lead. However, records at the police station indicated that he had been released on 30 June.

Victor Valencia Porras' body was taken to a local hospital in Matucana on 1 July, where an autopsy was performed. According to the local human rights organization representing the family, both the removal of the body from the police station and the autopsy took place without the presence of a member of the public prosecutor's office, as prescribed by the law. Instead, members of the *División Nacional de Investigación Criminalística* (DIVINCRI) were present and refused to allow the relatives and lawyer of the victim to enter the hospital.

The medical examination noted injuries to the body, arms and head, as well as bruising to the face. According to reports, the explanation by police officers of these injuries was that the victim had been found with a plastic bag covering his face. The doctor concluded that the cause of death was suicide. However, family members who saw the body stated that there were bruises on the back and legs, as well as scratches on the face, nose and back and burns on the legs. The medical report did not include mention of these injuries.

Walter Muñárriz Escobar (left).
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On 2 July the family of Nazario Valencia's brother filed a complaint of homicide against police officers in the Matucana police station. Two weeks later the public prosecutor in charge of the case ordered the exhumation of the body in order to carry out a second autopsy. The result of the second autopsy confirmed death by suicide, and the public prosecutor decided that there was no case to answer. The family's lawyer appealed this decision, but his appeal was denied. The family continue to fight for justice.

According to reports, members of the police station of Matacana have threatened and intimidated the family of the victim and witnesses.

· **Walter Muñárriz Escobar**

On 20 March 1999, Walter Muñárriz Escobar was detained and taken to the police station in Lircay, Huancavelica department, on suspicion of stealing goods from a local hotel. He has not been seen since.

Prisoners who were detained in the police station at the same time have stated that they heard Walter Muñárriz Escobar crying in pain and begging the officers to stop. When his mother went to the police station shortly after his arrest to enquire as to the whereabouts of her son, she was told that he had left the station in the early morning in the direction of his home. However, when a police officer went to see her following her report of her son's "disappearance", he told her that no arrest warrant had been issued against her son and that his detention was not registered at the police station.

On 22 April 1999, a judicial investigation into the alleged forced "disappearance" was initiated. The examining judge ordered the detention of three police officers, ruling that they were responsible for the "disappearance" of Walter Muñárriz Escobar. The police officers were taken to San Fermín Prison, Huncavelica department.

The prosecutor in charge of the case extended the complaint to include another two police officers for their alleged involvement in the "disappearance" of Walter Muñárriz. After cross-examining the five police officers, the attorney and the judge in charge of the case both stated that the officers were accountable for the crime of forced "disappearance". On 1 June 2000, the prosecutor recommended that they serve 15 years' imprisonment.

On 15 February 2001, the judge sentenced two of the five police officers to 18 years' imprisonment. The other three officers were acquitted. The human rights organization representing the family appealed against the ruling and requested a new trial to investigate the involvement of the officers acquitted. The case is now before the Supreme Court. According to reports, the case was also tried by a military court, which acquitted the officers of any involvement in the "disappearance" of Walter Muñárriz.

During the time that Walter Muñárriz' family has been campaigning for truth and justice, they have reportedly been victims of threats and intimidation. A former detainee held in custody at the same time as Walter Muñárriz, who was a witness for the prosecution, was also threatened by police officers and decided to change his statement as a result.

Moisés Pacco Mayhua

On 30 August 1999, Moisés Pacco Mayhua was offered a job in the kitchen of the police station in Macusani, in the province of Puno.

According to the information received by Amnesty International, on the same day Moisés Pacco was tortured by two policemen who accused him of stealing from the police station. He died early the next morning. The autopsy revealed the cause of death to be intra-abdominal trauma, hypovolemic shock (shock due to lack of liquids or too little volume of blood), and internal haemorrhaging (“*traumatismo intra-abdominal, shock hipovolémico y hemorragia interna*”).

On 8 September 1999, charges of torture leading to the death of Moisés Pacco (“*tortura seguida de muerte*”) were filed against the police officers implicated, and a judicial investigation was formally opened into his death. The judge in charge of the investigation ruled that there was evidence of torture. However, according to reports, the two police officers allegedly implicated have been transferred to a different location where they continue with their duties in the security forces. They have not yet appeared before the court where judicial hearing proceedings have begun.

· **Nelson Díaz Marcos**

On 12 May 2000, Nelson Díaz Marcos was detained while inebriated near the entrance to the *Juan María Rojas* Education Centre in the town of Pachía, Tacna department, and taken to the town’s police station. Both his wife and his neighbour witnessed the arrest.

Nelson Díaz Marcos.
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Nelson Díaz’s wife later went to the police station to enquire as to the whereabouts of her husband. She was reportedly told by the same police officer who had detained him that he was “resting”, and that “as he was drunk we have hit him a couple of times with a stick, but don’t worry, within a few hours he will be released” (“*tu esposo está descansando, como está mareado le hemos metido un par de varazos, no te preocupes, dentro de un par de horas ya sale*”). Later that day, a police officer visited Nelson Díaz’s wife and informed her that her husband had died and his body could be found in the hospital. The hospital confirmed that Nelson Díaz had been admitted to the hospital by a member of the National Police.

According to the autopsy report, the body showed significant signs of having been tortured and ill-treated. “The neck showed signs of asphyxiation, and the bridge of the nose was black. The chest, arms and back were purple and there were longitudinal marks on the palms, and fingers, the knees were shredded and bloody, and the left cheekbone was bruised and had partially subsided” (“*en el cuello presentaba huellas de*

haber sufrido asfixia, el tabique nasal se encontraba de color negro. La zona del pecho, los brazos y la espalda estaban de color morado y presentaban marcas en forma longitudinal en las palmas y los dedos de las manos, en las rodillas presentaban la carne desgarrada y ensangrentada y el pómulo izquierdo se encontraba amoratado y hundido”).

On 26 June 2000 the provincial attorney filed charges of torture before a criminal judge in Tacna. On 28 June the judge in charge of the case opened an investigation against the two police officers, who requested that the case be transferred to a military court. However, in August 2000 the High Court in Tacna ruled that the case should be dealt with in a civil court. The ruling was appealed by the defendants. In January 2001, the case was transferred to the Supreme Court for a final decision on whether it should be tried before a civil or military court. In May 2001, the Supreme Court upheld the High Court’s ruling and the case remained in the civil court.

According to reports received by Amnesty International, on 12 June 2000 the director of the human rights organization in Tacna that had taken up the case of Nelson Díaz received death threats to force him to drop the defence of the case. The threats stopped following the filing of a complaint.

Amador Carmen Canchaparán

In April 2000 Amador Carmen Canchaparán was detained with 11 others on suspicion of having links with the armed opposition, and taken to a military base in El Valle district, Huánuco province, Huánuco department.

According to reports, on the first day of his detention, Amador Carmen Canchaparán was punched and had his head submerged in a mixture of water and salt. The following day a gun was placed inside his mouth and he was threatened with death if he did not confess. On the third day, Amador Carmen Canchaparán was forced to bite into two electricity cables and threatened with electrocution. He was then forced to sign a document confessing to a crime and was threatened with death if he revealed to anyone that he had been tortured.

The first medical examination made by a legal physician on 26 April 2000, a week after Amador Carmen Canchaparán was detained, established he did not present any recent injuries and therefore that no signs of torture were apparent. A second examination by a private practitioner was carried out on 1 May, in which bruising to the head and body were recorded. A complaint of torture was filed before the Public Ministry against members of the military base in Huánuco province.

In January 2001 the public prosecutor extended the judicial investigation proceedings by 20 additional days as the evidence presented appeared inconclusive. However, on the basis of the findings of the medical report, the public prosecutor decided in February to drop the charges of torture. It was reported that the public prosecutors did not take into consideration the report by the private practitioner, despite the fact that the legislation which criminalizes torture establishes the right of the victim to be examined by another doctor to verify the result of the legal doctor's medical report.⁶⁴

Pedro Tinta Vera and Juan Domingo Cerrón Núñez

On 20 March 1999, Pedro Tinta Vera, also known as Pedro Pinglo Taboada, together with Juan Domingo Cerrón Núñez and one other person, was detained by members of the Peruvian National Police of Puente Piedra, Lima department, on suspicion of aggravated terrorism offences ("*terrorismo agravado*"). The three men were taken to the *Dirección Nacional de Investigación Criminalística* (DIVINCRI), the branch of the National Police for criminal investigation, where they were held for 19 days.

According to reports received by Amnesty International, once in the DIVINCRI's building, the three detainees were taken to the *División Anti-Secuestros* (DEVISE), the anti-kidnapping police office, where the police beat them, submerged their heads in water and applied electric shocks to their bodies. As a result of the torture, Pedro Tinta suffered a fracture to his right shoulder-blade. Juan Domingo Cerrón Núñez suffered internal bleeding. His body was covered in bruises and his asthmatic condition worsened. As a result of heavy beatings to his head, Juan Domingo Cerrón lost sensation on the right side of his face.

On 5 October 1999 the provincial public prosecutor (*Fiscal Provincial*) charged the three police officers with the crime of torture and on 18 October a civilian court judge in Lima issued a detention order against them. The three officers appealed against the order. The appeal was upheld by the High Court and the detention order was amended to a summons. In March 2002 judicial proceedings were initiated.

Amnesty International has received information that one of the three officers continues to serve in the police service and another, who has a previous record for crimes against the life and health of another detainee and causing bodily harm, has been promoted to the rank of Commander of the Peruvian National Police.

⁶⁴ Article 4.2 of Law N° 26926 reads: "*Los médicos legistas deberán concurrir de inmediato para el reconocimiento de quien resulte víctima de la tortura, sin perjuicio del derecho del denunciante a acudir a cualquier médico para su verificación*" (legal doctors must attend immediately any call to examine anyone who resulted a victim of torture without prejudice of the right of the complainant to seek advice from a different doctor to verify the conclusions reached by the legal doctor). Unofficial translation by AI.

Raúl Teobaldo Miguel Andahua

On 18 December 1998, Raúl Teobaldo Miguel Andahua was stopped in a street in Aguaytía, Ucayali province, Loreto department, beaten and forced into a car. He was driven to a nearby naval base where, according to reports, he was tortured by eight or more naval officers.

Raúl Teobaldo Miguel Andahua reportedly lost consciousness after having a stick inserted into his anus. When he recovered, he found himself in a cell, naked and wet. The following day officers allegedly applied electric shocks to his back and forced him to sign a statement confessing to terrorism-related offences. He was also threatened with death if he refused to state that his injuries were the result of a motorcycle accident.

By 23 December 1998 Raúl Teobaldo Miguel Andahua was handed over to the police in Aguaytía. The Public Ministry's representative who took up his case ordered an immediate medical examination. On 28 December 1998 the examination was carried out in the town of Tingo María, Huánuco department, where he had been transferred to and was being investigated by the anti-terrorism branch of the police. Days later he was released unconditionally because there was no evidence against him.

Raúl Teobaldo Miguel Andahua filed a complaint before the Public Ministry. In May 1999, the judge in charge of the investigation decided that there was a case to answer and charged four naval officers with torture.

Before the judicial investigation had been completed in the civil courts, a judge from the Second Permanent Navy Tribunal (*Segundo Juzgado de Instrucción permanente de la Marina*) asked for the case to be transferred to a military court. On 16 January 2000, the *Corte Suprema de Justicia*, Supreme Court of Justice, ruled that the case should be tried in a civilian court.

In September 2000, the prosecutor decided that Raúl Andahua had been a victim of torture and that the officers concerned should be tried under the 1998 legislation which criminalizes torture. The trial began in August 2001 in Pucallpa, Ucayali, Loreto department, and remains ongoing.

Alejandro Damián Trujillo Llontop

According to reports received by Amnesty International, Alejandro Damián Trujillo Llontop and another unnamed individual were detained in Lima on 1 March 2000 by

police from the *División de Servicios Especiales*, Special Division, and taken away in a military truck.

On 14 March, the father of the victim made a criminal complaint regarding his son's "disappearance" before the National Police Inspectorate of Peru (*Oficina de Inspectoría de la Policía Nacional del Perú*). Following internal investigations, the Special Division informed Alejandro Trujillo's lawyer that no one had been arrested on 1 March 2000. In April a charge of forced "disappearance" was filed before the Public Ministry.

At the beginning of May 2000 the family of Alejandro Trujillo was informed that on 2 March a body of a man aged about 25 had been found on the beach at El Callao, Lima department. The corpse was identified as that of Alejandro Trujillo. The autopsy report revealed that the death had occurred on 1 March and that, prior to death, the body presented serious wounds which could have been caused by torture and ill-treatment.

Alejandro Trujillo's family filed a further complaint of crime against life, physical integrity, health and the murder of Alejandro Damián Llontop (*delito contra la vida, el cuerpo y la salud, asesinato en agravio*) before the Public Ministry. The judicial investigation concluded that there was no case to answer. According to reports, the witnesses to Alejandro Trujillo's "disappearance" refused to confirm their statements after having been intimidated by police officers. The High Court must now decide whether to open judicial proceedings against the officers involved.

Lucas Huamán Cruz and Zosimo Lunasco Taype

On 1 September 1998, farmers Lucas Huamán Cruz and Zósimo Lunazco were detained on suspicion of theft and taken to San Francisco police station in the province of La Mar, Ayacucho department. According to reports, both men were beaten in an attempt to force them to confess. Four hours later they were released. Lucas Huamán Cruz died the next day.

Lucas Huamán Cruz
© Private.

According to the autopsy report, the cause of death was due to hypovolemic shock with rupture of the liver. The medical examiner described the following findings: "[S]welling of the eyelids; bloody secretion from the nose; a generalised edema on the thorax; inflamed testicles; bloody blister on the lower level limbs; evidence of a

haemorrhagic zone of the foot: internal haemorrhage in the abdominal cavity; rupture of the liver measuring 10cm in diameter and 1 cm in depth; rupture of 5cm in the left lobule of the kidney; in the spleen, rose shaped rupture; and in the sternum [breast bone], the fifth left rib fractured”. *“En la cara se encontró un edema palpebral; en la nariz secreción sanguinolenta; en el tórax, un edema generalizado; los testículos estaban inflamados; en el hígado, se encontró ruptura hepática de 10cm de diámetro por 1cm de profundidad; en el lóbulo izquierdo del riñón, ruptura de 5cm; en el vaso, ruptura en forma de rosa; y en el esternón, la quinta costilla izquierda fracturada.”*

One policeman was detained. In May 1999, the provincial prosecutor in charge of the case stated that “there is evidence that the accused is responsible for the crime of torture”, *“está plenamente acreditada toda responsabilidad penal del inculgado...como autor del delito de tortura”*. However, the examining judge concluded that there was insufficient evidence and in October 1999 the police officer was acquitted. Lucas Huamán’s family appealed this decision before the Supreme Court of Justice. The Supreme Court of Justice ruled that the sentence acquitting the police officer should be annulled and ordered a retrial. Following several delays, the new trial started in Ayacucho in September 2001.

According to information received by Amnesty International, Lucas Huamán’s son, Marcos Huamán, has received death threats since filing a complaint against the police for the death of his father.

Carlos López Flores

On 27 November 2000, Carlos López Flores, a taxi driver in Ayacucho department, was stopped by two police officers and a man in plain clothes on suspicion of drug trafficking offences. According to witnesses to the arrest, Carlos López was beaten and shot by the police. Three days later he died.

Carlos López Flores
© Private.

In December 2000, the family of the victim made a complaint to the Ombudsman’s office. The public prosecutor’s office in Huamanga, Ayacucho department, began an investigation into the death of Carlos López and identified one of the police officers allegedly involved.

In February 2001 the prosecutor in charge of the case rejected the charges of torture and charged the police officer with preterintentional (unpremeditated) murder (an act which results in greater harm than that intended or planned, and in a murder case is considered a mitigating circumstance). The human rights organization representing the family appealed this decision but the appeal was unsuccessful and the charges of torture had to be changed to the crime of grave bodily harm followed by death. In addition, a military judge appealed to the prosecutor in charge of the case to refer it to a military court. A high court in Ayacucho ruled that the case should be tried in a civilian court. At the time this document went to print judicial proceedings had begun.

Florinda Flores Linares, the mother of Carlos López, has reported that she was threatened in March 2001 by three armed men in an apparent attempt to stop her efforts to bring to justice the police officers who allegedly killed her son⁶⁵.

Adrián Toledo Alva

According to reports, on 17 June 2000, Adrián Toledo Alva was detained and tortured by personnel stationed in a military base in Jesús, Margos district, Huánuco department. He had apparently been accused two days earlier by the director of the school where he used to work as a guard of having stolen a musical instrument.

After his arrest, Adrián Toledo was taken to the police station of Margos district where he was reportedly beaten and tortured for several hours by submersion in water mixed with sault, chilli peppers and detergent. Later that same night, Adrián Toledo was released without charge after being threatened by the police and told not to go to a hospital in Huánuco, but to the local surgery in Margos instead. Adrián Toledo was examined by a doctor at the surgery on 19 June. The medical report states that the patient showed multiple injuries. On 27 June a legal doctor reported after examining Adrián Toledo that he showed numerous bruises and grazes to various parts of his body and a minor injury on his left shoulder.

On 22 June 2000, Adrián Toledo filed a complaint against the officers for torture. He also filed a complaint before the Ombudsman's office. As a result of the torture, Adrián Toledo has now difficulties with his sight and hearing, and suffers from severe headaches and backaches. He has also been psychologically affected.

The public prosecutor in charge of the case filed charges in October 2000 against two of the military officers, a second lieutenant and a lower ranking officer, allegedly involved in the torture of Adrián Toledo. Charges of torture were filed against the second

⁶⁵ For more information on the threats received by Carlos López Flores' mother see UA 54/01, AMR 46/004/2001, 12 march 2001.

lieutenant and for abuse of authority against the other. However, the prosecutor did not file any charges against any of the other lower ranking soldiers who reportedly also participated in the torture. According to the public prosecutor, they were not liable as they were only following orders from their superior. The UN Convention against Torture, which Peru ratified in 1988, states in Article 2.3 that “an order from a superior or public authority may not be invoked as a justification of torture”.

In October 2000, judicial proceedings began against the two military officers. The public prosecutor has requested 10 years’ imprisonment for the higher ranked official and one year’s imprisonment for the other military officer. The judge in charge of the case issued an order to appear in court for the lower rank officer accused of abuse of authority and an arrest order against his superior. The arrest warrant was later changed on appeal to an order to appear in court.

In January 2001 a private doctor confirmed in court that Adrián Toledo had been subjected to torture. The physician also stated that as a result of the torture the victim needed an operation on his nose and ears. The legal doctor appointed by the court also confirmed that Adrián Toledo was tortured.

At the time that this report went to print, judicial proceedings were continuing. Despite numerous requests to his superior, the higher ranking official has not appeared before the court to this date, and an order of arrest and detention has been issued.

Luis Enrique Rojas Vásquez

On 3 August 2000, Luis Enrique Rojas Vásquez was stopped on his way home by officers from Pueblo Nuevo police station, Chincha, Ica department, on suspicion of aggravated robbery (*robo agravado*). According to the police, he had robbed one of the police officers involved in his arrest. The police officers reportedly beat him before handcuffing him and forcing him violently into the car. Luis Enrique Rojas reported that on their way to the police station, the officer who had allegedly been robbed by the detainee threatened him with death while holding him by the neck.

While being interrogated at the police station, Luis Enrique Rojas denied having taken part in the robbery. The police officers then tortured him to force him to admit his participation in the robbery. They also threatened to take him to an isolated beach to “make him talk” (*“hacerle cantar”*).

According to reports, the police officers stated before the public prosecutor that they had found illegal drugs hidden in a newspaper that the detainee was carrying while he was being driven to the station in the police car. Luis Enrique Rojas denied being in

possession of any illegal drugs. In addition, the human rights organization representing him argued in his defence that he could not have been carrying anything, as he had been handcuffed with his hands behind his back and beaten by the police. Nonetheless, Luis Enrique Rojas was held in preventive custody for possession of drugs.

On 6 August 2000 a doctor examined Luis Enrique Rojas in the police station and noted in his report that the detainee showed bruises and contusions on his arms, thorax, face and legs. A legal doctor confirmed the diagnosis. Two days later Luis Enrique Rojas filed a complaint against two police officers for torture.

On 10 October 2000 the judge in charge of the case dismissed the complaint of torture and started legal proceedings against the two police officers for abuse of authority. The human rights organization representing Luis Enrique Rojas appealed against this decision. However, the judge finally closed the case reportedly as a result of the strong pressure by the police on the judicial authorities involved.

Following this decision, the human rights organization representing the victim called on the Ombudsman, the Attorney General, the public prosecutor and the High Court in Ica department to start a new and proper investigation into these allegations of torture. As a result, a new judicial investigation has begun. However, according to the latest reports received by Amnesty International, Luis Enrique Rojas has refused to continue with the case against the police officers for fear of possible reprisals by the police against him and his family.

During the investigation and judicial proceedings the police officers allegedly involved in the torture of Luis Enrique Rojas continue in active service.

Aldo Mercedes Silvestre Ramírez

On 4 July 2000, Aldo Mercedes Silvestre Ramírez, a student who suffers from paranoid schizophrenia, was detained without an arrest order and reportedly tortured by members of the police at Virú police station, Trujillo province, Libertad department.

According to reports, Aldo Mercedes Silvestre was stopped in the street by two police officers who proceeded to arrest him, despite the fact that there was no warrant for his arrest. According to the information received by Amnesty International, the arresting officers, together with other five officers, two of them in plain clothes, punched and hit Aldo Mercedes Silvestre with rubber bars before taking him to the police station. He was then taken to an open space inside the station, where he was beaten on the face and stomach, and dragged along the floor.

When the victim's mother was allowed to visit her son in the police station, he was in his underwear and was wet and covered in mud. She testified having seen two police officers beat her son with a rubber bar on the head. Two days later, Aldo Mercedes Silvestre was taken to El Milagro Prison, Trujillo Province, Libertad department, from where he was released without charge.

Aldo Mercedes Silvestre's family filed a complaint of torture against the police officers. On 7 July, the public prosecutor in charge of the case opened an investigation into the allegations and presented charges against seven officers from Virú police station for torture, abuse of authority and minor injuries. Charges were also presented against the chief of the police station and another police officer for abuse of public office and abuse of the administration of justice.

During the judicial proceedings which started in January 2001, the human rights organization representing the family complained that the judge was being partial, often taking the side of the defendants. According to reports, the judge will make a decision on this case shortly. A further trial has begun in a military court against the accused for the crime of abuse of authority.

According to reports, the police officers allegedly involved in the torture of Aldo Mercedes Silvestre have been transferred to a different location where they are still in active service.

José Luis Rivas Antón y Roxana González Miura

On 31 January 2000, José Luis Rivas Antón and his partner, Roxana González Miura, were detained by members of the *División de Investigación Criminalística*, DIVICRI (Division of Criminal Investigation) in Imperial, Junín department. According to the police, José Luis Rivas had been issued with an arrest warrant for theft. There was no warrant for Roxana González.

While in police custody the couple was beaten on the face and body. According to reports, José Luis Rivas was tortured to force him to confess to the theft. Both detainees were questioned by the police without the presence of a member of the public prosecutor's office. Roxana González was later released without being charged.

On the day of the arrest, a legal doctor examined José Luis Rivas and found bruising to his body. A later medical examination stated that the injuries were more severe than the previous report had established. In September 2000 the human rights organization representing the couple filed a complaint of torture on their behalf. The public prosecutor's office in charge of the case in Cañete, Junín department, did not arrange for a legal doctor to examine José Luis Rivas.

According to reports, Roxana González and a journalist investigating the case have been threatened while the investigation goes on. The public prosecutor in charge of the case has not yet decided whether there is a case to answer.

Juan Carlos Garay Pereyra

On 8 July 2000, Juan Carlos Garay Pereyra was detained by officers from La Natividad police station, Tacna department, on suspicion of theft. He was ill-treated on the way to the police station and when they arrived he was allegedly tortured by several officers. According to reports, Juan Carlos Garay was hung with his hands tied behind his back and beaten with a gun on the back of the neck. A gun was reportedly put to his head and he was threatened with death if he did not confess to the theft.

On 13 July 2000 a medical report confirmed that Juan Carlos Garay had been subjected to torture. That same day the victim's mother filed a complaint of torture against one of the alleged perpetrators before the public prosecutor's office in Tacna, Tacna department. However, in November the public prosecutor decided that there was no case to answer. The human rights organization representing the family has appealed this decision. In response to this appeal, the public prosecutor in charge of the case has now ordered a new investigation into the case.

Juan Carlos Garay's family has been reportedly subjected to threats and intimidation by the police officer against whom the complaint was filed and they have asked the authorities to protect them. Amnesty International has no information as to whether they have received such protection.

Jorge Jerí Juscamaita

On 4 August 2000, Jorge Jerí Juscamaita was stopped by police while driving in Huamanga, Ayacucho department, and asked to identify himself. According to reports, the police officers pushed him and grabbed his arm to force him to get out of the car. Jorge Jerí was beaten on the head, face and knee and suffered a fracture of the kneecap and damage of the ligaments as a result.

One of the police officers then took Jorge Jerí to a legal doctor who identified the injuries as the result of severe beating with a blunt instrument to the victim's head, nose, mouth and knee. Jorge Jerí was then referred by the doctor to a hospital in Huamanga where the diagnosis was confirmed. The police officer who took him to the doctor agreed to pay for Jorge Jerí's treatment but has not yet done so.

On 22 August 2000, Jorge Jerí filed a complaint against the police officer for abuse of authority (*abuso de autoridad*), serious injuries (*lesiones graves*) and aggravated physical ill-treatment (*maltrato físico agravado*). On 23 August, the human rights organization representing Jorge Jerí filed a second complaint against the officer and the chief of the police station of Huamanga for torture. The case is currently under judicial investigation.

Jenard Lee Rivera San Roque

On 5 May 2001, Jenard Lee Rivera San Roque was detained by officers from Cruz Blanca police station, Huaura, Lima department, on suspicion of theft. According to reports, no arrest order had been issued against him.

On the following day, Jenard Lee Rivera was taken in a van by nine police officers, eight of them in plain clothes, from the police station back to his home in San Bartolomé shanty town, Lima department. The officers entered Jenard Lee Rivera's residence without a search order or the presence of a public prosecutor. Once inside the house, Jenard Lee Rivera was severely beaten by the police with a chain and taken to the backyard where he was forced to dig. The police accused Jenard Lee Rivera of having stolen car parts and hidden them under the patio. According to witnesses, the police held Jenard Lee Rivera in the house and continued to beat him until the late evening, when he was taken back to the police station.

On 9 May, Jenard Lee Rivera was found dead in his cell. According to the police, he had hanged himself. However, he showed injuries on his face and body consistent with torture. A complaint of torture was filed by the victim's family on 22 June and the case is currently under judicial investigation. The body of Jenard Lee Rivera was exhumed in August 2001 in order to perform an autopsy to try to determine whether his injuries were the result of torture. Amnesty International does not know the result of this autopsy.

Following the death in custody of Jenard Lee Rivera, Amnesty International received reports that his family and neighbours in San Bartolomé, as well as the lawyer representing the family, were being intimidated by police from the station where Jenard Lee Rivera died. The organization believes that these actions were intended to deter the family and neighbours in San Bartolomé from seeking to bring to justice the police officers allegedly involved in the death of Jenard Lee Rivera. The threats have now stopped following action by human rights organizations, including Amnesty

International.⁶⁶ However, the organization has not yet received any information on whether the Peruvian authorities investigated these allegations.

On 23 November 2001, Amnesty International received a copy of a communication between the UN Special Representative on Human Rights Defenders and the Peruvian authorities. The Peruvian government informed the Special Representative that administrative disciplinary proceedings had been initiated against two police officers for disobedience and negligence. The government also informed the Representative that the decision on the complaint concerning the commission of the crime of torture is still “pending”.

Roy Paul Maldonado Valenzuela

On the evening of 13 May 2000, Roy Paul Maldonado and a friend were reportedly severely beaten by police officers in Huamanga, Ayacucho department. According to reports, while the young men were drunk and on their way home, they stole some bottles of beer from a vendor’s trolley. However, a neighbour saw the theft and after an argument the two friends put the bottles back.

After this incident, two police officers wearing plain clothes travelling on a motorbike stopped the two young men. The police officers did not identify themselves or try to arrest the two young men, but started to punch and kick them. Minutes later a police car reportedly appeared to drive them to the police station in Huamanga. According to reports, the two young men were also beaten in the police car and forced to clean the blood from the floor.

Roy Paul Maldonado filed a complaint of torture against the two police officers on the motorbike and two of their superior officers. The case is now under judicial investigation process. The human rights organization representing Roy Paul Maldonado has asked the Huamanga police to identify all their officers involved in the case and their superior officers to include their names in the investigation. According to reports, the police officers involved in this case have repeatedly failed to appear in court to testify before the judge.

Estefa Ccari Mamani

On 19 December 2000, Estefa Ccari Mamani was detained by two police officers. The arrest order against her, issued by a judge from Ilo, Moquegua department, was on

⁶⁶ See UA 134/01, AMR 46/12/01, 12 June 2001.

charges of theft which had previously been dismissed by the court. The police officers went into Estefa Ccari's home and handcuffed her, and pulled her to the police car by her hair while insulting and beating her. Estefa Ccari was taken to the police station where she was held until 22 December when she was taken before a judge and later released without charge.

A complaint of torture was made by a human rights organization in February 2001. The case is currently under judicial investigation.

· **Clotilde Vidal Paredes**

On 17 November 2000, Clotilde Vidal Paredes and her husband were walking towards a field to cut straw when they were stopped by a group of police officers wearing balaclavas believed to have come from Chaupi, Chinacampa village, La Libertad department. The officers beat Clotilde Vidal severely and shot her husband who died as a result of the injuries. The reason for the attack remains unknown.

The son of the couple reported the attack to the governor of Chinacampa who informed the Governor of the district. In addition, a complaint was made before the Ombudsman's office. The human rights organization representing the family is currently compiling evidence preparatory to filing a complaint of torture on behalf of Clotilde Vidal.

· **Frankois Mogollón Huamán**

On 15 October 2000, 18-year-old Frankois Mogollón Huamán was arrested at a university party in Yanacoa, Cusco department. According to reports, after a discussion between Frankois Mogollón and two others at the party, he was asked to go outside by two police officers, who took him to Yanacoa police station.

Frankois Mogollón was taken to an office at the police station where a National Police captain slapped him and ordered one of the arresting officers to bring a police baton. While the captain hit him with the baton on the head, the lower rank officer held him by his arms. Another student who witnessed the arrest and ill-treatment of Frankois Mogollón has confirmed his statement.

Frankois Mogollón was then taken to a cell while being kicked and punched on the back. He was threatened with death and again beaten again on his head.

According to reports, when the parents of the victim went to the police station to complain about the treatment their son had been subjected to, the officers denied having ill-treated him and alleged that they had only cautioned him. According to the family, there was no initial record of any complaint against Frankois Mogollón in the police station's files. The police showed the family a complaint filed against the detainee, but this was allegedly taken after Frankois Mogollón had been detained.

On 19 October 2000, the public prosecutor in charge of the case filed charges of coercion, abuse of authority and torture against the two police officers and asked for a sentence of two years' imprisonment for the crime of abuse of authority and five years for the crime of torture. However, in August 2001 the judge in charge of the case ruled that there was insufficient evidence against the police and ordered that the case be closed.

The human rights organization representing Frankois Mogollón appealed the ruling and the case is currently before a High Court. At the time this document went to print the High Court had not yet decided whether to uphold the appeal.

b. Cases of torture and ill-treatment in prisons

Pablo Pascual Espinoza Lome

On 16 January 1999, Pablo Pascual Espinoza Lome, a prisoner in Yanamilla prison in the town of Ayacucho, Ayacucho department, was forcibly taken out of his cell by two prison officers who accused him of having consumed alcohol. He was then taken to another cell where he was reportedly punched in the stomach. Pablo Pascual Espinoza Lome later died as a consequence of the injuries inflicted. The autopsy report revealed a ruptured spleen to be the cause of death.

Later that month an investigation was launched into his death. In August 1999 the High Court in Ayacucho sentenced one officer to 12 years' imprisonment and absolved the other. On appeal, the Supreme Court increased the first sentence to 15 years and ordered a new trial to investigate the involvement of the second officer who had been acquitted. In August 2000, the criminal court in Ayacucho sentenced the second officer to four years' imprisonment for the crime of torture. In January 2001, on appeal, the Supreme Court increased the sentence to six years.

According to information received by Amnesty International, Pablo Pascual Espinoza's wife was followed and intimidated by unknown persons when the trial started in January 1999.

Pablo Pascual Espinoza Lome

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· **Esteban Miñán Castro**

On 14 November 1999, Esteban Miñán Castro died, reportedly as a consequence of torture inflicted on him by prison officers in Tambo de Mora prison, in the province of Chincha, Ica department.

The prison doctor confirmed that Esteban Miñán Castro had died in a room in the prison where he had been forcibly taken and beaten by prison officers. According to reports, the autopsy revealed that Esteban Miñán Castro had died due to severe wounds.

Charges against the prison officers were originally filed as crimes against the administration of justice and abuse of authority (“*delito contra la administración de justicia y abuso de autoridad*”) However, in November 1999, the human rights organization representing the family filed a request to change the charges against the prison officers to that of torture causing death (“*tortura seguida de muerte*”).

Esteban Miñán Castro (right)
© Private.

In May 2000, the High Court of Chincha ordered that the officers implicated in the case be detained on suspicion of torture. In November 2000 the prosecutor in charge of the case recommended that five prison officers should be tried for the crime of torture. Charges against another prison officer were withdrawn and he was released.

In December 2000, the High Court of Chincha acquitted the five prison officers. The human rights organization representing the family appealed against the ruling and the case was referred to the Supreme Court in January 2001.

· **Javier Ángeles Salas, Jorge Ramón Ángeles Salas, Alejandro Trujillo Rosas and Miguel Pajuelo Rojas**

On 1 June 2000, several inmates of Potracancha prison in Huánuco, among them Javier Ángeles Salas, Jorge Ramón Ángeles Salas, Alejandro Trujillo Rosas and Miguel Pajuelo Rojas, were taken to a restricted area of the prison where they were reportedly tortured by a lieutenant of the Peruvian National Police Force, the head of security at the prison and seven other police officers. They were stripped naked, doused with basins of cold water, beaten in various parts of the body.

The inmates were apparently tortured as punishment for the complaints they made to the prison authorities regarding a delay on the counting of inmates. Several hours after Javier Ángeles, coordinator of one of the prison wings, complained, the head of security allegedly tried to remove him from his cell but was forced to stop when other inmates protested. He reportedly threatened Javier Ángeles and told him he would be back at night. The torture allegedly took place later that night.

The following day, a local public prosecutor, together with a member of the National Police in Huánuco and a legal doctor, verified that the inmates displayed marks of torture. The public prosecutor filed a complaint against the National Police lieutenant for abuse of authority (*abuso de autoridad*). Ten days later, another legal doctor examined the inmates' injuries. His report stated that the inmates had many bruises and grazes in several parts of their bodies caused by a blunt instrument.

A complaint was filed by a human rights organization on behalf of the inmates before the Ombudsman's office, which recommended to the public prosecutor in charge of the case that charges of torture be brought against all the police officers involved. The office also reported some irregularities and negligence during the investigation of this case.

In August 2000, the public prosecutor decided that the charge against the police lieutenant should be changed to one of torture. However, the judge in charge of the case refused to start legal proceedings, reportedly stating that the case was not torture as the abuse had neither been committed to obtain a confession or information, nor to punish the victim or a third person. A month later the public prosecutor reiterated the charge of torture, but the judge refused to admit the complaint once again. Judicial proceedings against all the accused were eventually initiated for the crime of abuse of authority. The public prosecutor requested sentences of two years' imprisonment.

On 1 June 2001, the judge ordered the lieutenant to pay 500 Soles in compensation (US \$139 approximately). Both the public prosecutor and the human rights organization representing the inmates appealed the decision, arguing that it was not an adequate sentence for the crime committed. However, the ruling was upheld by the Supreme Court. The human rights organization has now filed a legal complaint before the Supreme Court, which to this date has not yet ruled on this complaint.

Ernesto Laureano Vizcardo Márquez

In November 2000, Ernesto Laureano Vizcardo Márquez, an inmate of the maximum security prison of Yanamilla, Ayacucho department, was reportedly pushed to the ground by prison guards and sprayed in the eyes with a chemical. The attack took place after

Ernesto Laureano Vizcardo was seen by the guards attending an inmates' meeting to discuss possible actions following the ill-treatment of a prisoner by a guard on 15 November. Ernesto Laureano Vizcardo was in the next cell to the ill-treated inmate and he witnessed the attack. Ernesto Laureano Vizcardo was also put in an isolation cell for a month, apparently also as punishment for having taken part in this meeting. A medical report prepared by the prison doctor after examining the inmate showed extensive damage to the eyes.

On 29 November 2000, Ernesto Laureano Vizcardo's family filed a complaint of abuse of authority in relation to his being held in isolation arbitrarily. The human rights organization representing the family later extended the complaint to include charges of torture. However, on 9 January 2001, the public prosecutor in charge of the case decided to drop the charges and closed the case.

In January 2001, the Ombudsman's office sent an official communication to the public prosecutor in charge of the case stating that there was enough evidence to open a judicial investigation. However, according to the information so far received, the case remains closed.

Elisa Rivera Toribio

In December 2000, Elisa Rivera Toribio, a female inmate of Santa Lucía Prison in Pasco department, reported that she had been sexually abused by a prison guard on many occasions since she had been in custody. According to her testimony, a prison guard went into her cell several times very early in the morning and touched her without her consent. The last of these attacks took place in February 2001 when the same guard attempted to rape her.

In addition, Elisa Rivera Toribio reported that had been verbally ill-treated and forced to do the laundry for the guards. She alleged that the prison guards blackmailed her by threatening to suspend her visiting rights and to take the money she earned by cooking and selling food for the prison visitors.

Elisa Rivera filed a complaint for abuse of authority against three prison officers. The human rights organization representing her is seeking to extend the complaint to include the crime of torture.

According to reports, since Elisa Rivera reported these incidents, she has been the object of reprisals by the prison guards. She has been prevented from selling food in the prison, which was her only way of making a living and supporting her seven-year-old son, and false accusations of causing disorder inside the prison have been brought against

her. She has also been threatened with a transfer to a different prison if she refuses to drop the charges. The case is currently under judicial investigation.

c. Cases of torture and ill-treatment of military personnel in military bases and barracks

· José Luis Poma Payano

In November 2000, 18-year-old José Luis Poma Payano, a member of the Peruvian Air Force, died in suspicious circumstances. According to the Air Force, he killed himself after returning to the military base in Monterrico, Lima, from which he had deserted. José Luis Poma had earlier told his family that he was being ill-treated and abused by members of the force. Concerned about her son, José Luis Poma's mother visited the military base and was told by a senior officer that he would investigate the case. Apparently encouraged by this reassurance, José Luis Poma returned to the base. One day later he was dead.

According to reports, José Luis Poma's family was only informed about his death 12 hours afterwards. By that time the body had already been taken to hospital and a military doctor had signed a death medical certificate which stated that the victim had killed himself. No member of the public prosecutor's office or a legal doctor was present when the body was taken to the hospital, as prescribed in law. The human rights organization representing the family filed a complaint of torture and asked for the body to be exhumed in order to carry out a second autopsy.

In August 2001 the public prosecutor in charge of the case refused to allow the family's lawyer to see the file on the case; this decision violated the right of the private prosecution put forward by the family to have access to all the information in order to prepare their case. The human rights organization representing the family appealed the decision and asked for the prosecutor to be removed from the case. The appeal was rejected.

In October the human rights organization received notification that the body of José Luis Poma was going to be exhumed in order that a second autopsy could be performed. However, the procedure had to be delayed because the public prosecutor was not present. At the time this case went to print a new date had not been set to carry out the exhumation.

· Marino Fernández Sánchez

Marino Fernández Sánchez, aged 19, deserted in February 2000 from the military base where he was performing his military service because he was reportedly being subjected to torture and ill-treatment by his fellow officers and superiors. According to reports, Marino Fernández was unable to walk or speak as a result of the treatment to which he was subjected.

On 3 November Marino Fernández's family filed a complaint of torture at the Ombudsman's office in Huancavelica against military personnel from two military bases, the Concepción and the '9 December' bases in Junin department, where Marino Fernández had been carrying out his military service. In the complaint the victim identified as perpetrators a soldier from the Concepcion military base, and a sergeant and a corporal from the '9 December' military base.

On 12 December, Marino Fernández was seen by a legal doctor. The medical report indicated that the victim showed sensory disorder, severe injuries to the spine, paralysis of the lower body, neck tremors, malnutrition, signs of psychological ill-treatment and possible brain disorder. Because of the seriousness of his injuries, he was referred first to a hospital in Huancavelica and was later transferred to another in Callao Province, where he died on 29 December 2000.

A complaint of torture against the military officers was filed by a human rights organization on behalf of the family of Marino Fernández. The Ombudsman's office is involved in the investigation of this case which is currently before the public prosecutor in Concepción.

Ronald Enrique Peña García

Nineteen-year-old Ronald Enrique Peña joined the Peruvian Air Forces in June 1999. He was serving in the military base of El Pato, Talara town, Piura department, when he was accused on 23 July 2000 of taking part in a robbery in the houses located within the military base, an area which he was responsible for guarding.

Ronald Enrique Peña was detained incommunicado for seven days in the military base. After this period his father was able to visit him. According to reports, Ronald Enrique Peña told his father that he was being unfairly accused of having taken part in the robbery, and stated that members of the intelligence service of the Peruvian Air Forces were trying to make him confess by submerging his head in water containing detergent and by beating him.

On 6 August 2000, when his mother went to visit him at the military base, Ronald Enrique Peña had marks of cigarette burns on his hands. He told his mother that members

of the intelligence service of the Peruvian Air Forces had burned him to get a confession from him because they thought he had seen those who broke into the houses in the military base. Witnesses confirmed that Ronald Enrique Peña was being subjected to torture.

On 11 August, Ronald Enrique Peña died in the military base from a haemorrhage caused by a bullet injury. The forensic report indicated that the victim showed marks on his hands consistent with cigarette burns and a bullet injury caused by a military weapon identified as a model used by the Peruvian Air Forces.

Four days after the death of his son, Ronald Enrique Peña's father filed a complaint of torture before the Ombudsman's office against two members of the intelligence service of the Peruvian Air Force. In February 2001, a complaint was filed before the public prosecutor of Talara, Piura department, for torture and endangering a dependant person. The case is currently under judicial investigation.

· **Frank Alfredo Romero Arrieta**

On 19 February 2001, 18-year-old Frank Alfredo Romero Arrieta joined the *Fuerza Aérea del Perú*, FAP, Peruvian Air Force, in order to carry out his military service. Several days later he told his family that he was being severely ill-treated by higher ranking officials at the military base of Las Palmas, Lima department, where he was serving. He also stated that the officials involved had taken some of his belongings and were restricting his food. According to reports, Frank Alfredo Romero displayed evidence of being frightened, his lips were split and his hands were injured.

On 28 February, three days after he had visited his family, Frank Alfredo Romero telephoned them and said: "*saquenme de aquí que me golpean mucho*" ("take me out of here because they are beating me up a lot") before quickly hanging up the phone. On 1 March he was taken to a military hospital of the Peruvian Air Force in Lima, where he was placed in a psychiatric wing. The doctors who saw him reported that Frank Alfredo Romero's health problem was purely psychosomatic and that his symptoms had been triggered by his fear of being in the military base. There was no mention in the report of the bruises on Frank Alfredo Romero's body.

On 4 March, when Frank Alfredo Romero's relatives went to visit him they were told by hospital staff that senior officials had instructed them to deny access to his relatives. A representative of the Ombudsman's office and the human rights lawyers who represent the victim and his relatives were also prevented from visiting. That same day, the lawyers presented a writ of *habeas corpus* on his behalf.

On the following day, a judge visited Frank Alfredo Romero and he testified that he had been subjected to torture by higher ranking officials. His lawyers filed a complaint on his behalf before the Attorney General against five military officers.

However, in July, the public prosecutor in charge of the case refused to file charges for the crime of torture and charged four officers with crimes against the life, body and health of Frank Alfredo Romero, and the fifth officer with abuse of public office. An order that the five officers appear in court was issued. The human rights organization representing the victim appealed the court's decision and the case is now before the Supreme Court.

The human rights organization representing Frank Alfredo Romero is concerned for the safety of the witnesses to his torture who are still carrying out their military service at the Las Palmas military base. The organization believes that they could be subjected to threats and intimidation to prevent them from testifying.

· **Omar Sihuar Chihuantito Gibaja**

In 1999, Omar Sihuar Chihuantito started working in the *Escuela Superior de Comandos del Ejército* (High School of Army Commanders) under the supervision of an army captain. On 17 February 2000, according to reports, Omar Sihuar Chihuantito was beaten by the captain almost to the point of unconsciousness, apparently because he had not been able to finish his work. He was subsequently beaten again by a senior official and lost consciousness.

Omar Sihuar Chihuantito was admitted to hospital and was found to have suffered brain injury as a result of ill-treatment. He remained in a coma for 10 days and was in the intensive care unit for a further 30 days. He currently has problems with his eye sight and suffers from hemiplegia (paralysis to one side of the body).

Omar Sihuar Chihuantito filed a complaint of torture against the captain who beat him. In addition, a military tribunal opened an investigation against the two army officials and another two who were allegedly also involved in the beating for crimes committed while on duty. No decision has yet been made whether the case should be heard before a civil or a military court.

· **Juan Carlos Aliaga Mera**

According to reports, on 27 September 2000, Juan Carlos Aliaga Mera, a member of the Peruvian Air Force, died in suspicious circumstances while on duty in Lima. According

to members of the Air Forces, he died after he accidentally shot himself. However, the victim reportedly showed signs of injuries to the face, neck and ankles.

After she was informed about Juan Carlos Aliaga's death, his widow was prevented from seeing the body and was also told by Air Force's officials not to get in contact with the media unless she wanted to "learn certain things she would not like".

In March 2001, the victim's family filed a complaint against two members of the Peruvian Air Forces. The case is currently under investigation. However, the public prosecutor in charge of the case has reportedly not ordered the exhumation of the body in order to determine the cause of the death.

In April 2001, Juan Carlos Aliaga's widow reported having been subjected to intimidation by armed unknown individuals who waited for her outside her house and telephoned her at work. On 7 May 2001, Amnesty International sent a letter to the then Minister of Defence, General Walter Ledesma Rebaza, urging him to investigate the death of Juan Carlos Aliaga and the reports of intimidation against his widow. No reply was received. Juan Carlos Aliaga's widow was reportedly refused protection on the grounds that she had not identified those who were harassing her.

In December 2001, Amnesty International received reports indicating that the widow of Juan Carlos Aliaga had again been followed by unknown individuals. The organization wrote to the then Minister of Defence, David Waisman, on 13 December urging him to investigate the allegations of intimidation and to protect the victim. Again, no response was received.

Huber Méndez Barzola
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d. Cases of torture and ill-treatment of children and young people under 18

Huber Méndez Barzola

On 5 March 1999, Huber Méndez Barzola, a 16-year-old secondary pupil, was stopped in the city of Huamanga, Huamanga province, Ayacucho department, by police carrying out a special operation against the rise of juvenile gangs in the area. According to reports, he was detained on suspicion of having committed "aggravated terrorism".

Huber Méndez was taken to the police station in Huamanga where he was stripped naked by three police officers. He was beaten and a sharp object (*huanchaco*, a metal chain with two pieces of metal on each end) which the police allegedly found in his possession was forced into his anus.

According to information received, on 18 March 1999 a judge formally opened an investigation into the torture of Huber Méndez and two police officers were sentenced to six years' imprisonment for the crime of torture. The Supreme Court of Justice ratified the sentence in August 2000. During the legal proceedings, Huber Méndez was reportedly followed by unknown persons and his family received intimidating messages.

Charges against Huber Méndez were brought in a civil court for the crime of belonging to a gang ("*pandillaje pernicioso*") and in a military court for the crime of "aggravated terrorism". Huber Méndez was acquitted in the civil court, and the case was closed in the military court after the public prosecutor decided that there was no case to answer.

Luis Alberto Taipe Huamaní
© Private.

Luis Alberto Taipe Huamaní

According to reports, Luis Alberto Taipe Huamaní, aged 13, was tortured on 27 September 1999 while detained in the *División Especializada contra el Terrorismo y Antidrogas de la Policía Nacional* (Specialized Division of the National Police against Terrorism and Drugs) in the province of La Merced, Junín department.

The minor, who had allegedly committed a crime against private property ("*delito contra el patrimonio*"), was confined for four days in a communal cell with adults. His police statement was written without the presence of either his lawyer or a representative of the Public Ministry. While in custody, he was hit by police officers with a rubber stick in the face and on the soles of his feet.

Luis Alberto Taipe Huamaní's case was taken up by the *Defensoría del Pueblo*, Ombudsman's Office, following a medical report which stated that Luis Alberto Taipe had been tortured. The Office recommended that charges of torture be filed against the police officers concerned. However, the prosecutor in charge of the case concluded that there was no case to answer.

According to reports, the family of the victim refused to appeal against this decision because they feared that their complaint would have a negative effect in the enquiry against Luis Alberto Taipe. The family was also concerned that the inhabitants of the shanty town where they lived would react violently against them for appealing against the prosecutor's decision, since neighbours had reportedly complained previously to the prosecutor's office that it was "defending criminals", and to the Ombudsman's office for its decision to visit the victim and assist the family.

· **Alejandro Ticlavilca Huere and underage boy Simial Reyes Salgado**

On 6 March 2000, 13-year-old Simial Reyes Salgado was detained without an arrest order by police officers from Carhuamayo police station, Junín department. That same evening, six police officers went to the home of his friend Alejandro Ticlavilca, who was detained and taken to the police station. Police officers reportedly beat Alejandro Ticlavilca, stamped on his legs and face and twisted his arms, in an attempt to force him to confess to a robbery. Simial Reyes was held in police custody for two days before being released. It is reported that Simial Reyes was arrested and tortured to force him to sign a statement implicating Alejandro Ticlavilca and two other adults in the robbery.

During judicial proceedings against Alejandro Ticlavilca and the other two adults for the crime of robbery, the prosecutor stated that the statement taken from the child could not be used as he suffered from a slight mental illness. As a result, the charges were dropped.

· **Bernardino Mamani Mamani and his underage son Marco Antonio Mamani Yufra**

On 7 July 2000, Bernardino Mamani Mamani and his son, Marco Antonio Mamani Yufra, then aged 11, were detained by police officers from the police station of Llabaya District, Tacna department. According to the police, the boy had been involved in a robbery.

Once in the police station, the head of the police station reportedly undressed Marco Antonio Mamani, doused him with cold water and beat him to force him to confess to the robbery. In addition, the same police officer ordered his subordinates to punish Bernardino Mamani for "not being able to educate his son properly" (*por no saber educar a su hijo*). Bernardino Mamani was subjected to the same ill-treatment as his son.

On 10 July, a doctor examined Bernardino Mamani. In his report, the doctor stated that the victim showed injuries on the right side of the lumbar area and the left leg. According to the examining doctor, both of these injuries could have serious complications later on. That same day, the mayor of Lluabaya wrote to the head of the local police to express his deep concern and condemnation of the treatment Bernardino Mamani and his son had received in police custody.

The family made a complaint before a local human rights organization, but declined to present charges against the police officers for fear of possible reprisals.

Hugo Alberto Arias Córdor, Felicia Campos Palacín and underage boy Rosmel Arias Condor

On 19 January 2001, Hugo Alberto Arias Córdor, and his brother, 16-year-old Rosmel Arias Condor, were detained by members of the National Police of Colquijirca, Pasco department, when they were allegedly attempting to steal a car with other young people in Huayllay, Pasco department. According to reports, when the detainees tried to escape they were shot at.

Rosmel Arias was reportedly taken into police custody but his brother scaped. While in police custody, Rosmel Arias was tortured to force him to name the other youngsters involved in the crime. A day later, on 20 January, Rosmel Arias was taken to hospital where he died as a result of hypovolemic shock. The autopsy revealed that he also suffered from severe injuries to the head and a fractured skull.

On the day Rosmel Arias died, police officers went to the house of his brother, Hugo Alberto Arias who, together with his partner, Felicia Campos Palacín, and their three children, aged 14, nine and eight, were detained and taken to the office of the National Police Department of Criminal Investigation. The police accused the family, including the children, of having attempted to steal the car for which Rosmel Arias had been arrested the previous day.

According to reports, Hugo Alberto Arias was severely beaten and was taken to hospital as a result. Felicia Campos was pulled by her hair, kicked on her legs and punched, while her children watched. The whole family, including the children, were detained for three days until the evening of 23 January. During the time they spent in police custody they were not offered any food.

The human rights organization representing the family filed a complaint against the police officers involved for the crime of torture, including the crime of torture followed by death (*tortura seguida de muerte*). The case is at present under judicial investigation.