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# PERU

## @Amnesty International's concerns about torture and ill-treatment

### Preface

On 9 November 1994 the Committee against Torture (CAT), established under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), met in two public sessions with a delegation of the Government of Peru, headed by the Minister of Justice, Fernando Vega Santa Gadea. The purpose of the sessions, which were held in Geneva, Switzerland, was to examine the Government of Peru's initial report (UN reference: CAT/C/7/Add.16), submitted to the CAT in February 1994. The CAT took up Peru's report on how it gave effect to the Convention against Torture, which Peru ratified in July 1988.

Prior to the CAT meeting to review the Peruvian Government's report, Amnesty International submitted to the CAT a summary of its concerns about torture and ill-treatment by the Peruvian security forces. A copy of this report, which included 19 cases of torture and ill-treatment, was also sent to the Government of Peru.

Amnesty International now makes public the report it submitted to the CAT and the Government of Peru, but with three additional sections (Sections 5, 6 and 7). Section 5 reports the conclusions and recommendations arrived at by the CAT on 9 November 1994, following its examination of the Government's report. Section 6 outlines Amnesty International's recommendations to the Government of Peru. Section 7 makes reference to Amnesty International's concerns about the widespread human rights abuses by the armed opposition in Peru, including the use of torture and deliberate and arbitrary killings.

### 1. Introduction

Amnesty International has been concerned about a widespread and systematic pattern of human rights violations in Peru since 1983, when the armed forces took over from the police the responsibility for controlling the armed opposition. The pattern has included thousands of cases of "disappearance" and extrajudicial execution, the vast majority of which were documented between January 1983 and December 1992. In addition, since May 1992 hundreds of cases of arbitrary detention under Peru's anti-terrorism legislation have also been documented. Within this long-standing pattern, Amnesty International has received persistent reports of torture and ill-treatment of detainees and prisoners by members of the Peruvian armed forces and the police. These violations have taken place in the context of an internal armed conflict between the security forces and the armed opposition groups *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), and the *Movimiento Revolucionario Túpac Amaru*, MRTA, Túpac Amaru Revolutionary Movement.

There are no statistics on the real level of torture and ill-treatment by the security forces in Peru. Many cases are never reported because the victims fear reprisals. Others, documented as cases of

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"disappearance", extrajudicial execution or arbitrary detention, include reports by independent human rights organizations that the victim was also tortured or ill-treated. On the basis of these reports and of the investigations conducted by Amnesty International, the organization has concluded that torture and ill-treatment of alleged members of the PCP and the MRTA continues to be widespread.

The Appendix to this document describes selected cases which are representative of the patterns of torture and ill-treatment in Peru. The selection of 19 cases covers a period which spans from April 1990 to March 1994. As part of its work, Amnesty International has appealed to the Peruvian authorities to have all these cases investigated by an independent body, make the results of the investigation public, and ensure that those found responsible are brought to justice. The authorities have not responded to some of the appeals. In other cases, the authorities responded only with general statements about the government's condemnation of the atrocities committed by the armed opposition and its human rights policies. In still other cases, the authorities responded with information about particular cases, but failed to provide information which satisfactorily resolved Amnesty International's concerns.

Information about investigations conducted by the authorities, in relation to some of the cases identified in the Appendix, have been transmitted by the Government of Peru to the United Nation's Special Rapporteur on Torture. Similarly, the Government of Peru has also addressed some of these cases in its Initial Report submitted to the Committee against Torture on 22 February 1994. Amnesty International comments in the Appendix on the Government's responses to the Special Rapporteur on Torture and to the Committee against Torture. By the end of September 1994 the organization continued to regard all the cases selected for the Appendix as unresolved.

## **2. Torture and ill-treatment under a state of emergency**

Amnesty International believes that the suspension of specific constitutional rights under Peru's emergency legislation, in combination with the fact that emergency zones are placed under the political-military command of the armed forces, make for circumstances which facilitate the use of techniques of torture and of ill-treatment. Among the rights enshrined in the 1979 and 1993 Constitutions, but suspended under emergency regulations, is the requirement that the authorities may only enter and search people's homes with a court order. Crucially, during a state of emergency security forces are also permitted to carry out detentions without a judicial warrant.

In zones declared under a state of emergency torture and ill-treatment, including rape and sexual abuse, have generally been carried out by uniformed troops acting on their own or, sometimes, in conjunction with military-led civil defence patrols. Official civil defence patrols acting on their own are also reported to have tortured or ill-treated detainees. Members of the police, especially those attached to the *Dirección Nacional Contra el Terrorismo* (DINCOTE), the national police anti-terrorism division, have also been accused of torture, ill-treatment, rape and sexual abuse, against people suspected of terrorism-related crimes.

These abuses are inflicted on detainees as a means of interrogation, as a form of punishment or intimidation, and as a means of securing a signed confession. It is often reported to be inflicted on members of peasant communities, trade unionists, students and community activists suspected of being members or sympathizers of the PCP or MRTA.

Since July 1990, when President Alberto Fujimori assumed power, the government has repeatedly declared its unrestricted respect for human rights. President Fujimori has acknowledged that, during the governments of former presidents Fernando Belaúnde Terry (1980-1985) and Alan García Pérez (1985-1990), the military deployed counter-insurgency operations in remote rural areas, in which innocent civilians and alleged members or sympathizers of the PCP and the MRTA were targeted indiscriminately.

President Fujimori has also acknowledged the occurrence of occasional excesses under his own administration. These excesses have included abductions and illegal killings by the security forces. Despite these acknowledgements, Amnesty International has documented at least 800 cases of "disappearance" and 230 cases of extrajudicial execution during President Fujimori's administration.

Measures taken by President Fujimori to protect human rights include legislation passed in September 1991 which gave prosecutors attached to the Public Ministry full authority to enter all detention centres, including military installations in the emergency zones, to investigate alleged "disappearances" and the condition of detainees. In the same month a similar agreement for representatives of the International Committee of the Red Cross (ICRC), to investigate the conditions of detainees, was reached between the government and the ICRC. Public prosecutors as well as members of the ICRC were also granted access to registers of detainees in the emergency zone military bases. In February 1994 the government announced that the computerized National Register of Detainees, implemented as part of a policy to put an end to "disappearances" and extrajudicial executions and placed under the administration of the Public Ministry, had become fully operational.

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However, although these and other measures are claimed by the present government to have contributed significantly to the marked reduction in "disappearances" and extrajudicial executions, they have had little, if any, impact on the pattern of torture and ill-treatment. This is borne out by the fact that Amnesty International continues to receive complaints and reports from Peru which, as in years prior to the reduction of "disappearances" and extrajudicial execution, give account of scores of detainees having been tortured and ill-treated.

### **3. Torture and ill-treatment under the 1992 anti-terrorism laws**

Since May 1992, the vast majority of complaints laid before the authorities about torture and ill-treatment are linked to prisoners detained under Peru's anti-terrorism decree laws passed in 1992. Amnesty International believes that detention, interrogation, and trial procedures enshrined in these laws undermine safeguards designed to prevent torture and ill-treatment. The organization also believes that regulations governing access by visitors to prisoners convicted of terrorism-related offences are conducive to the inhuman treatment of prisoners.

In April 1992 President Fujimori, with the full backing of the Armed Forces Joint Command, announced the immediate dissolution of Congress, the suspension of constitutional rule and the setting up of a transitional Government of Emergency and National Reconstruction. He also announced a reform of the Constitution and of Congress. Three institutions charged with safeguarding human rights and investigating allegations of human rights violations were immediately closed as a result. For four weeks - until early May 1992 - the judiciary and the Public Ministry effectively ceased to function. The dissolved Congress, which had been responsible for investigating human rights violations, remained completely frozen for a period of at least nine months, until Congress was reopened in early 1993.

Between April and December 1992 President Fujimori and his Council of Ministers ruled the country by decree law. Several decree laws issued during this period included new counter-insurgency measures. The new anti-terrorist legislation included Decree Law N° 25,475, issued in May 1992, which specified a wide range of criminal acts as terrorist; Decree Law N° 25,659, issued in August 1992, which defined the crime of treason; and Decree Law N° 25,744, issued in September 1992, which laid down detention, investigation, pre-trial and trial procedures in terrorism-related cases. These anti-terrorism laws make up a set of judicial and administrative circumstances which Amnesty International believes has served to facilitate the use of torture and ill-treatment by the security forces.

Since the introduction of the new anti-terrorism legislation in 1992 the courts, by ordering the unconditional release of dozens of prisoners, have recognized that they have been falsely imprisoned. The vast majority of these prisoners had been imprisoned for at least 12 months before they were freed. Almost invariably these prisoners claimed to have been tortured and ill-treated, either immediately after they were detained by the army or police, or after they were transferred to establishments used by the DINCOTE, the anti-terrorism police. The DINCOTE is responsible for interrogating the suspect and preparing the statement on the basis of which prosecutors formally accuse the suspect. Since May 1992, Amnesty International has documented the cases of 63 prisoners of conscience who have been falsely imprisoned. The organization has also documented the cases of at least 250 prisoners of conscience. Again, many of these prisoners of conscience and possible prisoners of conscience have alleged that they were tortured or ill-treated soon after they were detained, but did not file a formal complaint about these

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abuses, instead seeking to concentrate their efforts in securing their freedom by defending their innocence.

If complaints about "disappearances" and extrajudicial executions have significantly declined in 1993 and 1994 (compared to the ten years 1983 through to 1992), complaints about torture and ill-treatment have persisted across the entire period 1983-1994. Amnesty International believes that complaints of torture and ill-treatment persist because of a lack of political will by the authorities to address the problem and bring a halt to it.

Amnesty International believes that there are five specific administrative practices under Peru's current anti-terrorism legislation which facilitate the torture and ill-treatment of detainees. These are: the suspension of the right to *habeas corpus* over a period of 17 months; incommunicado detention; prohibiting army and police personnel involved in the detention and interrogation of suspects from being cross-examined during trial proceedings; the imposition of inhuman penitentiary regimes for convicted prisoners; and making public photographs and video footage of unconvicted prisoners in striped prison clothing.

### **3.1 Suspension of the right to *habeas corpus* for terrorism-related cases**

Article 6 of Decree Law N° 25,659 stated that at no stage of police and judicial procedures, involving those charged under the provisions made in Decree Laws 25,475 and 25,659, may a petition for *habeas corpus* be filed in favour of the accused, thus violating Article 27.2 of the American Convention on Human Rights which deals with the suspension of guarantees. This provision was maintained on the statute books and enforced for a period of 17 months, until it was repealed in November 1993.

*Habeas corpus* is, in theory, the most powerful remedy in cases of unlawful detention or where detainees' rights have been violated. It is one of the most important instruments by which the actions of the security forces may be judicially controlled.

### **3.2 Incommunicado detention**

Extensive powers are granted to the police during the investigative stage in cases of alleged terrorism. Article 12 of Decree Law N° 25,475, which deals with the investigation stage, permits the police to hold a detainee for a period of 15 days (later modified by Decree Law N° 25,744, see below). During this period the defendant's lawyer cannot see his client until such time as the defendant presents his statement in the presence of a representative of the Public Ministry. The decree law does not state with precision exactly at what stage this occurs. According to this decree law, the police have the right to hold the detainee in total incommunicado detention "when the circumstances require it and the complexity of the investigations demand it".

Decree Law N° 25,744 entrusts the DINCOTE, the national police anti-terrorism division, with the task of investigating all terrorism-related cases, and allows the police authorities to extend the period of detention beyond 15 days in cases where the detainee is suspected of treason, "in order to obtain better results in the investigation". The police may thus hold a detainee in such cases for an indefinite period of time, since no

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maximum period is defined in law.

Peru's new Constitution, which came into effect in December 1993, granted constitutional status to some of the administrative procedures outlined above. Article 2(24.f) of the Constitution grants the police the power to hold persons accused of terrorism-related crimes for up to 15 days prior to bringing them before a judge. Article 2(24.g) grants the police the power to hold persons incommunicado for up to ten days "if it is indispensable for the clarification of a crime".

### **3.3 Trial procedures**

Decree Laws N° 25,475 and N° 25,659 make provision for all defendants in terrorism-related cases to be tried by civilian or military judges whose identity remains anonymous. All such cases are heard in specially prepared courts installed in civilian prisons or military establishments. The non-public nature of these trials precludes the possibility of independent observers having access to the trials. Moreover, according to Decree Laws N° 25,475 and N° 25,744, members of the police or of the military involved in detaining a suspect, and police officers involved in the interrogation of the suspect and the preparation of the accused's declaration, cannot be called upon as witnesses during the trial. The possibility of cross-examining members of the security forces involved in the detention and interrogation of suspects, and who are accused of torturing them, is thereby precluded.

### **3.4. Penitentiary regimes for convicted prisoners**

Peru's anti-terrorism legislation, which makes provision for prisoners to be sentenced to periods ranging between six years and life imprisonment, has resulted in many prisoners being sentenced to at least 20 years in jail. Under Peru's 1992 anti-terrorism legislation a new and stricter penitentiary regime was established for prisoners convicted of terrorism-related offences. Decree Law No. 25,475, issued in May 1992, explicitly prohibits such prisoners from availing themselves of any of the benefits provided for in the Penal Code and the Code of Criminal Sentencing. This law also states that for the first year of their prison sentence prisoners will remain permanently isolated. In addition, the law prescribes a regime whereby at no time during their sentence may a prisoner share their cell with another prisoner. Decree Law No. 25,475 also states that prisoners are permitted a weekly visit by members of their immediate family.

Supreme Resolution No.114-92-JUS, issued by the Ministry of Justice in August 1992, made stricter and more explicit the regulations governing visits to prisoners convicted of terrorism-related offences. The Resolution indicates that visits are confined to one 30-minute visit per month by two members of the prisoner's immediate family, and prohibits any physical contact between the prisoners and visitors. Visitors are also obliged to prove their identity and relation to the prisoner by supplying the prison authorities with relevant identity documents.

Amnesty International believes that the regulation which confines prisoners to total isolation for a period of one year is conducive to the cruel and inhuman treatment of the inmate. The organization is also concerned about the numerous reports from prisoners who were released following conviction, from close relatives visiting prisoners, and from independent lawyers and prison visitors, about administrative

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practices that add to the inhuman and degrading treatment suffered by prisoners. These practices include: restricting visits to ten minutes per month; allowing visits to take place in circumstances where numerous prisoners are being visited simultaneously, and where prisoners and visitors have to shout at each other in order to be heard through the closely-meshed metal barriers that separate them; and prohibiting prisoners from having a radio, newspapers, writing materials and books.

### **3.5. The public identification of unconvicted prisoners in striped prison clothing**

Since the passing of Peru's anti-terrorism legislation in 1992, and as part of the drive to publicly demonstrate that the government's counter-insurgency strategy is having the desired results, the authorities have encouraged the police to parade PCP and MRTA suspects before journalists, press photographers and television cameras. Almost daily, Peruvian newspapers and television carry visual images of unconvicted prisoners dressed in striped prison clothing. Amnesty International knows of no judicial or police regulations which either allow or prohibit them to engage in the above practice.

Many of these prisoners are subsequently unconditionally released by the police. However, as a result of this treatment, many are heavily stigmatized and suffer the consequences among relatives, neighbours and work colleagues. Amnesty International believes that parading unconvicted suspects before the media amounts to degrading treatment.

## **4. Other circumstances facilitating the use of torture**

Amnesty International is also concerned about three further circumstances which serve to undermine safeguards designed to prevent human rights violations, including torture, and thwart prompt and effective investigations into allegations that human rights have been violated. These circumstances include periodically stopping the International Committee of the Red Cross (ICRC) from freely conducting its work; failing to provide the Public Ministry with adequate resources and undermining its independence; and ensuring that the military continue to enjoy a virtually impregnable sense of impunity.

### **4.1. Obstructing the work of the International Committee of the Red Cross**

Between mid-September 1992 and mid-February 1993 the government refused the ICRC access to all prisons administered by the Ministry of Justice. The Ministry of Justice was reported to have stated that the terms requested by the ICRC for visiting prisoners accused of terrorism were unacceptable to the government. In February 1993 the Ministry of Justice renewed authorization for delegates of the ICRC to have access to all penal centres.

In April 1994, once again, the authorities withdrew permission for the ICRC to freely conduct its legitimate work, this time by denying it entry into an area in the Alto Huallaga where the army claimed to have launched a major offensive against strongholds of the PCP. The authorities declared that the decision had been taken to safeguard the security of ICRC delegates and because they believed that the ICRC was giving the PCP advance warning of impending counter-insurgency operations. The ICRC was excluded from the zone for a period of at least two months. At the same time the ICRC was also denied access to



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military detention centres in the area; this decision was reported to have been revoked in May. The decision of the authorities to deny the ICRC prompt and free access to the Alto Huallaga zone of combat and to military detention centres in the area was taken in the context of allegations of gross human rights violations perpetrated by ground troops against peasants living or working in the area. According to the testimonies of witnesses compiled by journalists and independent human rights organizations, men, women and children were tortured, ill-treated and killed. Some witnesses testified to women and girls having been repeatedly raped and sexually abused.

Despite Congress' Human Rights and Pacification Commission initiating an investigation into these allegations of gross human rights violations in the Alto Huallaga, by the end of September 1994 the Commission had not made public its findings. The Commission is presided over and dominated by parliamentarians belonging to or supporting the government of President Fujimori.

Amnesty International believes that withdrawing permission from the ICRC for its delegates to have unrestricted access to prisons between September 1992 and February 1993, and to the region of the Alto Huallaga where concerted counter-insurgency operations were launched in April 1994, facilitated the circumstances in which torture or ill-treatment could take place. The organization also believes that prohibiting entry to the ICRC - and other independent human rights organizations - into the Alto Huallaga combat zone, effectively served to obstruct prompt and legitimate investigations into alleged human rights violations.

#### **4.2. The role of the Public Ministry**

Official investigations of allegations of torture and ill-treatment are carried out by prosecutors working for the Public Ministry, an institution headed by the Attorney General. The vast majority of denunciations made before the Public ministry during the past 14 years have failed to secure redress, partly because of impediments and deficiencies which limit the Ministry's powers and functions. The lack of resources to enable public prosecutors to conduct investigations, the lack of official support, and the degree of military control over the emergency zones, are all factors which have contributed to the inability of the Public Ministry to fulfil its constitutional role in the defence of human rights. Provincial prosecutors attempting to investigate denunciations of human rights violations, particularly in the emergency zones, have often been obstructed and refused information by members of the armed forces. In addition, the lack of independence of the Public Ministry from interference by the armed forces has been frequently reported in the light of high-profile cases of gross human rights violations by the army. For example, Amnesty International has received detailed documentation in which Public Ministry provincial prosecutors complain of being harassed and threatened, in relation to investigations being carried into the massacre of some 30 peasants, in Cayara, Ayacucho department, in May 1988; and the massacre of some 15 peasants, in Santa Bárbara, Huancavelica department, in July 1991.

#### **4.3. Impunity**

Since a pattern of human rights violations began in 1983 the security forces have enjoyed almost total impunity. Despite investigations by independent human rights organizations, Public Ministry prosecutors and Congressional Commissions, which have identified military culpability for gross human rights

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violations, there have been few prosecutions and even fewer convictions for these crimes. As a consequence, thousands of complaints about gross human rights violations have never been promptly and effectively investigated, and the alleged perpetrators remain at large. Rare exceptions to this pattern of impunity are to be found in a handful of high-profile cases, such as in the La Cantuta University case, where nine army officers were sentenced by a military court, to terms of imprisonment ranging between one and 20 years for the abduction and extrajudicial execution of nine students and one professor in July 1992. However, even in this case, allegations against those who were said to have ordered the operation, and later attempted a cover-up, were never investigated by an independent judicial body.

Military courts claim jurisdiction in almost all such cases and routinely fail to investigate or to convict soldiers and officers implicated in human rights violations. Failure to hold members of the armed forces to account for gross human rights violations encourages them to act with impunity. Only exceptionally have members of the police force and of the armed forces been brought to justice before military or civilian courts, and convicted for unlawful killings.

In Peru, despite the fact that the Code of Military Justice does not specifically include the crimes of torture, secret arrest, enforced disappearance, or aggravated homicide, military courts generally have jurisdiction over all cases involving crimes committed in the course of duty by individual members of the security forces. Article 19(7) of the Code of Military Justice also exempts military personnel from criminal responsibility for acts carried out under orders, provided "the order is not notoriously illicit". Military jurisprudence has not, however, provided a clear basis on which to assess the present interpretation of the term "notoriously illicit" in the context of counter-insurgency operations. Military courts are presided over by career officers who are not required to have legal training. The proceedings are conducted in secret, and civilian complainants and witnesses are excluded.

According to statements issued by the authorities, between 1989 and 1991 70 cases of violations of human rights were presented to the Supreme Council of Military Justice, and between August 1990 and July 1991, "37 army officers were sanctioned by their Institution or by the Supreme Council of Military Justice for violations of human rights". However, neither the government nor the military justice system has made public the identities of the perpetrators, the offences they are alleged to have committed, or the punishment meted out to them.

The military justice system, which almost invariably has retained jurisdiction over members of the armed forces accused of human rights violations, also acts as a facilitator for the practice of torture and ill-treatment, since it has, with rare exception, failed to investigate and prosecute soldiers and officers implicated in such offences. Amnesty International knows of only one case in which the military justice system has brought to trial officers accused of being implicated in the death of two persons who were severely ill-treated by them. By the end of September 1994 the organization had not received information as to the outcome in this case. Neither is the organization aware of a single case of alleged torture and ill-treatment by members of the armed forces or police in which the perpetrators have been brought to justice before a civilian court, and the accused convicted.

The government has given no indication that it intends to take the necessary steps to ensure the transfer of jurisdiction in cases of human rights violations from the military to independent civilian courts. Amnesty International believes this to be a major contributory factor in perpetuating the sense of impunity which appears to pervade the armed forces, and hence facilitates the practice of torture and ill-treatment

## 5. The Committee against Torture examines the Government of Peru's initial report

On 9 November 1994 the Committee against Torture (CAT), established under the United Nations (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), met in two public sessions with a delegation of the Government of Peru, headed by the Minister of Justice, Fernando Vega Santa Gadea. The purpose of the sessions was to examine the Government of Peru's initial report (UN reference: CAT/C/7/Add.16), submitted to the CAT in February 1994. The CAT took up Peru's report on how it gave effect to the Convention against Torture, which Peru ratified in July 1988.

A press release issued by the Information Service of the UN Office at Geneva, reported on the first of the two CAT sessions which dealt with Peru's initial report. The press release states in part:

"Fernando Vega Santa Gadea, Minister of Justice, introducing his country's report, said the days when Peru did not investigate or punish those who violated human rights were long over [...] César San Martín-Castro, of the Ministry of Justice, added that torture was expressly prohibited in Peru [...] However, despite much progress, this phenomenon had not been totally eradicated [...] It was not the case that the [anti-terrorism] legislation had served to facilitate the use of torture by the armed forces." (UN Press Release HR/CAT/94/21)

However, CAT expert Ricardo Gil Lavedra is reported by the Information Service of the UN Office at Geneva as saying:

" There was concern that [Peru's] anti-terrorist legislation did not lead to the eradication of torture, but rather that it contributed to it. The reports of the various non-governmental organizations, including Amnesty International, and [the reports] of the special [UN] rapporteurs on torture and [on] extra-judicial, arbitrary and summary executions, coincided in concluding that torture was carried out on a massive scale in Peru and that its perpetrators enjoyed complete impunity." (UN Press Release HR/CAT/94/21)

At the end of the examination of Peru's record in adhering to the standards enshrined in the Convention against Torture, the CAT made an oral statement<sup>1</sup> bringing together its conclusions and recommendations. The CAT recognized the Government's efforts in informing international human rights bodies about Peru's human rights record, implementing a human rights education programme for the security forces, and passing legislation designed to safeguard human rights. However, the CAT expressed its profound concern about the practice of torture by the Peruvian security forces. The CAT concluded that there exists a widespread practice of torture during the interrogation phase in terrorism-related cases, and that impunity is enjoyed by the perpetrators. The Committee was also of the opinion that the current anti-terrorism legislation fails to measure up to international fair trial standards and was concerned to learn that civilians are subjected to trials under military jurisdiction.

The CAT also concluded that the legal and administrative measures adopted by Peru to comply with Article 2(1) of the Convention against Torture<sup>2</sup> were not effective in preventing torture, and that the

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<sup>1</sup> The statement will be reproduced by the UN Office for Human Rights in the forthcoming official summary records of the CAT sessions which dealt with Peru's initial report.

<sup>2</sup> Article 2(1) of the Convention against Torture reads: "Each State Party shall take legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction."

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authorities failed to comply with Articles 12 and 13 of the Convention against Torture.<sup>3</sup>

The CAT recommended to the Government of Peru a set of practical measures designed to bring legislative, administrative and judicial practices into line with international human rights standards. These measures included:

- reviewing Peru's anti-terrorism legislation, particularly those aspects of the legislation which touched on:
  - incommunicado detention;
  - the right of the accused to an adequate defence;
  - the use of secret courts<sup>4</sup>;
  - the use of military tribunals to try civilians;
  - the independence and impartiality of the courts;
- making provision for the human rights education of doctors and members of the security forces;
- making provision for the rehabilitation of victims of torture;
- bringing into operation the National Council of Judges<sup>5</sup> and the Office for the Defence of the People<sup>6</sup>;
- making available the resources necessary for the effective functioning of the prosecutors offices of the Public Ministry;
- examining the possibility of the Government declaring its adherence to Articles 21 and 22 of the Convention against Torture<sup>7</sup>;
- incorporating the term "torture" as defined in the Convention against Torture<sup>8</sup> in Peru's Criminal Code, and ensure that those found guilty of torture are punished according to the gravity of the crime.

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<sup>3</sup> Article 12 of the Convention against Torture reads: "Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." Article 13 of the Convention against Torture reads: "Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."

<sup>4</sup>In May 1992 President Alberto Fujimori and his Council of Ministers issued anti-terrorism Decree Law N° 25,475, which made provision for the identity of prosecutors, judges, and other officials involved in hearings in which the accused is tried and sentenced, or in appeal hearings, to remain secret. Cases heard before civilian and military courts are heard *in camera*, in rooms where the identity of the judges is concealed by the use of special screens placed between the judges and the defendants, by the use of a device which distorts the voice of the judges, and by judges signing documents with numbers and not their names. Cases heard before civilian courts are heard in specially furnished rooms inside prisons.

<sup>5</sup>The National Council of Judges is an independent body legislated for in the Constitution of Peru. According to the Constitution, which came into effect in December 1993, the Council is charged with the selection and naming of judges and prosecutors.

<sup>6</sup>The Office for the Defence of the People was also legislated for in the 1993 Constitution of Peru. The Constitution charges the Office "with defending the constitutional and fundamental rights of the individual and of the community."

<sup>7</sup>Article 21 of the Convention against Torture concerns State Parties to the Convention expressly recognizing the competence of the Committee against Torture to receive complaints by a State Party against another State Party, for not complying with the standards enshrined in the Convention. Article 22 of the Convention concerns State Parties to the Convention expressly recognizing the competence of the Committee against Torture to receive and examine complaints about cases of torture allegedly inflicted on individuals.

<sup>8</sup>Article 1 of the Convention against Torture reads: "For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

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## **6. Amnesty International's recommendations to the Government of Peru**

Torture is a violation of fundamental human rights, condemned by the General Assembly of the United Nations as an offence to human dignity and prohibited under national and international law. In Peru torture persists, despite the State having ratified the Convention against Torture in 1988. In Amnesty International's experience, legislative prohibition is not enough. Immediate steps are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally. It is in this context that Amnesty International urges the Government of Peru to give careful consideration to the conclusions and recommendations arrived at by the CAT outlined above.

Amnesty International also urges the Government of Peru to implement the following program for the prevention of torture.

- **Official condemnation of torture**

The highest authorities in Peru should demonstrate their total opposition to torture. They should make clear to all law enforcement personnel that torture will not be tolerated under any circumstances.

- **Limits on incommunicado detention**

The Government should ensure that incommunicado detention does not become an opportunity for torture. It is vital that all prisoners be brought before a judicial authority promptly after being taken into custody and that relatives, lawyers and doctors have prompt and regular access to them.

- **No secret detention**

The Government should keep procedures for detention and interrogation under regular review. All prisoners should be promptly told of their rights, including the right to lodge complaints about their treatment. There should be regular independent visits of inspection to places of detention. An important safeguard against torture would be the institutional separation of authorities responsible for detention from those in charge of interrogation.

- **Independent investigations of reports of torture**

The Government should ensure that all complaints of torture are impartially and effectively investigated. The methods and findings of such investigations should be made public. Complaints and witnesses should be protected from intimidation.

- **No use of statements extracted under torture**

The Government should ensure that confessions or other evidence obtained through torture may never be invoked in legal proceedings.

- **Prohibition of torture in law**

The Government should ensure that acts of torture are punishable offences under the criminal law. In accordance with international law, the prohibition of torture must not be suspended under any circumstances, including states of war or other public emergency.

- **Prosecution of alleged torturers**

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Those responsible for torture should be brought to justice. This principle should apply wherever they happen to be, wherever the crime was committed and whatever the nationality of the perpetrator. There should be no "safe haven" for torturers.

- **Training procedures**

It should be made clear during the training of officials involved in the custody, interrogation or treatment of prisoners that torture is a criminal act. They should be instructed that they are obliged to refuse to obey any order to torture.

- **Compensation and rehabilitation**

Victims of torture and their dependants should be entitled to obtain financial compensation. Victims should be provided with appropriate medical care and rehabilitation.

- **International response**

The Government should use all available channels to intercede with governments accused of torture. The Government should ensure military, security or police transfers or training do not facilitate the practice of torture.

- **Compliance with international instruments**

The Government should ensure that all law enforcement personnel comply with international instruments containing safeguards and remedies against torture.

## **7. Abuses by the Peruvian armed opposition**

The pattern of torture and ill-treatment by the security forces described in this document occurs against a background of widespread abuses by the clandestine armed opposition groups Partido Comunista del Perú (Sendero Luminoso), PCP, Communist Party of Peru (Shining Path), and the Movimiento Revolucionario Túpac Amaru, MRTA, Túpac Amaru Revolutionary Movement.

Since 1980 Amnesty International has received thousands of reports of abuses attributed to the PCP. These abuses have included cases of torture and of the deliberate and arbitrary killings of civilians and members of the security forces who were hors de combat. Thousands of those killed by the PCP have been defenceless civilians not involved in the internal conflict. The PCP has also continued regularly to torture captives, sometimes after mock trials conducted before forcibly assembled villagers. The group has also carried out selective assassinations of military and civilian officials. Police and military personnel whom it has captured or who were incapacitated by wounds or surrendered have also been killed. Such abuses have also occasionally been attributed to the MRTA.

### **7.1 Amnesty International's condemnation of armed opposition abuses**

Amnesty International condemns hostage taking, and the torture and killing of prisoners by anyone, including political and armed opposition groups, as a matter of principle. It also condemns other deliberate and arbitrary killings, for example killings carried out solely because of the victim's ethnic origin, sex, colour, language, religion, or beliefs.

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The organization works within the framework of international law as it concerns the human rights obligations of governments and of principles derived from humanitarian law which **all parties** involved in internal armed conflict must respect. Amnesty International condemns the abuses of armed opposition groups responsible for the torture or deliberate and arbitrary killing of civilians not involved in the conflict and of members of the security forces who are *hors de combat*.

The organization does not treat opposition groups as if they had the status of governments which are party to international human rights standards. Amnesty International promotes minimum international standards of humane behaviour, such as the principles contained in humanitarian law, by which any armed opposition group and government should abide, and it urges them to endorse and uphold these standards.

Amnesty International is fully aware of the extent of political violence in Peru, including extensive abuses by the PCP and MRTA. The organization, which has repeatedly condemned such abuses, first condemned the PCP's abuses in August 1983, in a letter directed to former president Fernando Belaúnde Terry expressing concern about evidence of human rights violations by the armed forces in the emergency zones. Since then the organization has explicitly condemned abuses by the PCP in its publications, submissions to international human rights organizations and letters to successive Peruvian governments. Amnesty International has also expressed publicly its condemnation of the PCP through interviews broadcast internationally and within Peru, and through letters and extensive interviews published in the Peruvian press. For instance, in July 1992 Amnesty International publicly condemned the PCP car bomb attack in Miraflores, Lima, which killed some 22 civilians; and in May 1994, during a visit of an Amnesty International delegation to Peru which included investigating human rights violations by the government's security forces and abuses by the armed opposition, the Peruvian press, including *El Comercio*, reported on a statement made by Amnesty International in which the organization expressed its unqualified condemnation and opposition to the thousands of abuses perpetrated by the PCP.

Amnesty International urges the PCP and the MRTA to fully respect and abide by the humanitarian standards enshrined in Common Article 3, paragraph 1(a), (b), and (c), of the four Geneva Conventions of 1949, whatever the extent of their resort to violence, and whatever the level of fighting or violent confrontations with the government. The preamble to Common Article 3, and the paragraph sections referred to above, state:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment."



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Amnesty International believes that the kind of abuses referred to above, and which Common Article 3 is designed to safeguard against, can never justify the violation by the authorities of fundamental human rights. In the words of the UN Human Rights Committee, "...recognizing that the Government has a duty to combat terrorism, the Committee considers that the measures taken to do so should not prejudice the enjoyment of fundamental rights enshrined in the [International] Covenant [on Civil and Political Rights], ..." (UN Doc. CCPR/C/79/Add.23, para 8).

## **7.2 Amnesty International's recommendation to the armed opposition**

Amnesty International urges the PCP and the MRTA to:

- fully respect and abide by the humanitarian standards enshrined in Common Article 3, paragraph 1(a), (b), and (c), of the Geneva Conventions of 1949, whatever the extent of their resort to violence, and whatever the level of fighting or violent confrontations with the government.

## APPENDIX

### 19 SELECTED CASES OF REPORTED TORTURE AND ILL-TREATMENT IN PERU

#### Case 1

In the department of Ucayali on 25 September 1990 **Amanda Guerra López**, aged 21, was reportedly raped and **Lester Mozombite Cartagena**, aged 23, and two 16-year-old boys and a girl aged 15, were tortured and threatened. Amanda Guerra and Lester Mozombite have since been "disappeared". According to reports, the five of them were travelling on a bus from Pucallpa to Tingo María when they were stopped at a military checkpoint near the army base at Km. 86 of the Federico Basadre Highway. They were detained, and Amanda Guerra was allegedly raped by several soldiers in the Km. 86 base. The three teenagers were reportedly beaten, and the 15-year-old girl was also raped by eight soldiers. The three minors were subsequently transferred to another military base and released on 29 September, after soldiers threatened them with the killing of Lester Mozombite and Amanda Guerra if they reported the incident.

Several Peruvian Embassies have acknowledged the appeals made by Amnesty International in relation to this case, but have made no reference whatsoever to the concerns raised by the organization. By the end of September 1994 Amnesty International considered the case as unresolved.

#### Case 2

On the night of 7 June 1992, 14-year-old **Froily Mori Vela** was at her parents' home in the hamlet of La Unión, Nueva Lima district, Bellavista province, San Martín department. According to reports, a group of six soldiers from the Bellavista barracks, led by a lieutenant, entered and searched the Mori Vela household. After the search, Froily Mori was ordered to accompany the soldiers, who claimed they had to talk to her. When she and her parents refused to comply with the order, they were apparently threatened at gunpoint. Froily Mori was then reportedly forced outside into the garden. In a sworn affidavit Froily Mori is reported to have stated: "They took me to the far end of the vegetable garden, where one after another they raped me, starting with the lieutenant. The seven [soldiers] abused me".

According to reports, in a medical certificate issued on 10 June 1992 from the *Unidad Técnica de Salud de Bellavista*, Bellavista Health Clinic, a forensic doctor who examined her found physical evidence consistent with her allegations.

The Government of Peru informed the Special Rapporteur on Torture that a provincial prosecutor from Bellavista initiated an inquiry in September 1992, and that various members of the Leoncio Prado military detachment in Tarapoto were charged with rape (see Report of the UN Special Rapporteur on

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Torture, E/CN.4/1993/26, paras. 371-372). However, Amnesty International is not aware of the outcome of the judicial procedures against those charged. By the end of September 1994 the organization considered the case as unresolved.

### Case 3

In September 1990 soldiers reportedly tortured at least **16 men and an unspecified number of women** in the province of Vilcashuamán, Ayacucho department. Three of the 16 men reportedly died of injuries consistent with having been tortured. The *Federación de Instituciones de la Provincia de Vilcashuamán*, Province of Vilcashuamán Federation of Institutions, in a written statement, described the torture which took place in a nearby church: "...They were tied up with wire and hung upside-down from a beam and whipped; afterwards they were made to lie on the floor, one on top of another, forming a pile of human bodies such that the person at the bottom carried the weight of all the others and the soldiers jumped on top of them; after this ill-treatment they were submerged in water contained in cylinders, but the water was hot... and then they were moved to another cylinder full of cold water and submerged until they were dying..."

In addition several unnamed women and schoolgirls were allegedly raped. One witness, in a recorded and transcribed testimony, stated: "...[the soldiers] began to rape the schoolgirls, just as they raped the community women, but they won't report it because they are frightened, they won't talk..."

The Initial Report submitted by the Government of Peru to the Committee Against Torture on 22 February 1994 indicates that the military conducted an investigation into the alleged torture of three out of the 14 victims identified by name by the complainants. One of the three - Bernabé Baldeón García - died after he was detained. The army claims he died from a heart attack, following a fall from a donkey, while being transferred to a military base. However, six local government officials from the district of Independencia, Vilcashuamán province, department of Ayacucho, claimed Bernabé Baldeón had died as result of been tortured. He was apparently buried without having an autopsy performed on his body. The Initial Report also indicates two of the identified detainees who were reportedly tortured - Jesús Baldeón Zapata and Santos Baldeón Palacios - were released in perfect health and were in no way ill-treated. The Initial Report does not make any reference whatsoever as to whether the military investigation took up the allegations of torture against the other 11 named persons. Neither is there any reference to investigations into allegations that two unnamed men died under torture, and that an unspecified number of unidentified women and girls had been raped by the army patrols which detained the three men identified above.

Amnesty International is concerned that the investigations conducted were not carried out by an independent body, and that there appears to have been no initiative whatsoever by the Public Ministry to investigate the allegations. By the end of September 1994 the organization considered the case as unresolved.

### Case 4

In April 1990, **13 people** were reportedly killed and at least **five others**, including an eight-year-old girl, "disappeared" after their detention by an army patrol in an operation that extended through several

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peasant communities in Chumbivilcas province, Cuzco department, and in neighbouring Apurímac. The province of Chumbivilcas was not at the time under state of emergency regulations. Among other peasants detained by the patrol and later released were three women who were reportedly raped by troops. Eleven of those killed were later found dumped on a hillside. Autopsy reports found that the bodies bore multiple bullet wounds caused by a type of weapon used by the armed forces, and that many appeared to have suffered torture, including being burned and stabbed, before being killed. Although a Senate commission of inquiry attributed responsibility for the killings to the armed forces and urged that the officers directly involved be identified, no judicial case has gone forward.

By the end of September 1994 Amnesty International continued to regard this case as unresolved.

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#### Case 5

On 18 October 1990 the beaten and bullet-ridden bodies of **18 people** were exhumed from three mass graves, 17 of which were reportedly identified. The graves, which had previously been discovered by relatives and friends of the victims, were located in a ravine named Chillcahuaycco, in the district of Santiago de Pischa, Huamanga province, Ayacucho department. According to reports, the bodies presented bullet holes in the skull and other parts of the body.

In February 1992 it was reported that a lower civilian court had enough evidence to charge an army officer known as "Centurión" with aggravated homicide in connection with the killings. However, according to reports, in September 1992 he was absolved by a military tribunal and returned to active service.

The Initial Report submitted by the Government of Peru to the Committee Against Torture on 22 February 1994 confines its reporting on this case to indicating that summary proceedings were initiated by a civilian court against an army sergeant suspected of being responsible for the deaths of the 17 victims. However, Amnesty International has learned that the examining judge was not able to make any progress on the case, since the military authorities prohibited the sergeant in question from appearing before the judge. The organization is also concerned that the investigation conducted by the military was not carried out by an independent body. By the end of September 1994 Amnesty International considered the case unresolved.

#### Case 6

During the months of August and September 1992 at least **26 students** "disappeared" after their reported detention by the security forces in the department of Junín. The tortured and bullet-ridden bodies of least 22 of the victims were later found in circumstances suggesting they may have been extrajudicially executed.

All of the detentions took place in or near the city of Huancayo, Huancayo province, capital of Junín department and all of the victims were students at the *Universidad Nacional del Centro*, National University of Central Peru, in the city of Huancayo. Relatives of the majority of the victims made denunciations to the *Fiscal Especial de Defensoría del Pueblo y Derechos Humanos*, the Public Ministry's Special Provincial Prosecutor for the Defence of the People and Human Rights in Huancayo, in which they indicated responsibility of the police or the armed forces.

In October 1992 the Attorney General appointed an *ad hoc* prosecutor to investigate the "disappearances" and the circumstances and manner in which eight of the students had died. Amnesty International is not aware as to whether the prosecutor's investigations prospered. By the end of September 1994 the organization considered this case as unresolved.

#### Case 7

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**Juan Apolinario González**, a 37-year-old trade union leader at a Lima paper mill, reportedly suffered beatings, electric shocks and had his head submerged in water while being held in detention at the headquarters of the security police in Lima. He was apparently detained on 10 March 1991 by members of the security police in Paramonga, a Lima neighbourhood. The detention occurred during a strike at the paper mill. Reports indicate that he was initially beaten in a police vehicle before being taken to the police headquarters where the torture took place. He was transferred to the custody of the investigative police the following day, and was released on 12 March without charge. Juan Apolinario González denounced the torture to the Barranca Joint Provincial Prosecutor and to the Special Attorney for the Defence of the People and Human Rights.

The Government of Peru informed the UN Special Rapporteur on Torture that it had not been proven that Juan Apolinario González had been subjected to torture by members of the security police in Paramonga (see the report of the Special Rapporteur on Torture, E/CN.4/1992/17, paras. 178(a) and 179). However, the Government of Peru appears not to have submitted any evidence as to who conducted the investigation and on what basis the conclusion was arrived at. By the end of September 1994 Amnesty International considered the case as unresolved.

#### Case 8

**Ten leaders** of the *Comité de Defensa de los Bosques de San Ignacio*, Committee for the Defence of the San Ignacio Woods, were reportedly tortured while being interrogated at the San Ignacio police headquarters, San Ignacio province, Cajamarca department. They were detained on 27 June 1992 by the police at their homes or work places, following a confrontation between workers at INCAFOR S.A., a timber enterprise operating in the San Ignacio woods, and those who opposed the enterprise. The confrontation resulted in the killing of two of INCAFOR S.A.'s workers. The detained leaders of the Committee for the Defence of the San Ignacio Woods, an organization created to oppose the felling of trees and other works initiated by INCAFOR S.A., were charged with terrorism-related offences.

The prisoners were reportedly tortured or ill-treated during interrogation. One of them described the treatment he was subjected to: "...my arms were tied behind my back with some wet pieces of cloth and then they hung me... they kicked me, they beat me on the ribs, the head...All I wanted was to die..." The other detainee said that while at the San Ignacio police station he had his head submerged in a [water] cylinder some eight times. One of the detainees said that although he was ill-treated he was not tortured. He saw, however, how two other detainees had their ribs broken. After the interrogation, the detainees were taken to the Pisci prison, in Lambayeque, in the department of Chiclayo.

On 30 June, relatives of the detainees presented a *habeas corpus* petition to the San Ignacio court which was accepted by judge Dr. Emiliano Pérez Acuña. However, when the judge tried to visit the detainees to examine them he was prevented from doing so by the police.

Amnesty International adopted these prisoners as prisoners of conscience. In March 1993, nine months after their detention, all the prisoners in this case were unconditionally released, on the grounds that there was no evidence linking them to charges of terrorism laid before them by the prosecution.

The Initial Report submitted by the Government of Peru to the Committee Against Torture on 22 February

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1994 indicates that the police investigations into this case concluded that "PNP Major César Coquis Coz used neither violence nor his firearm against the detainees or against Dr Emiliano Pérez Acuña, the examining magistrate, and that the rule of law and observance of human rights were ensured by the presence of the representative of the Office of the Public Prosecutor". Amnesty International is concerned that this conclusion has been arrived at as a result of an investigation conducted by the police into allegations of torture and ill-treatment by members of that force, and was therefore not independent. The organization is also concerned to have learned, through the Initial Report, that the examining magistrate, Dr Acuña, who attempted unsuccessfully to examine the condition of the prisoners in the wake of their arrest, was subsequently removed from office by the Supreme Court of Justice, and that he faced charges of terrorism and perversion of the course of justice. Amnesty International believes the removal of Dr Acuña may have been the result of political pressure to have him removed from the case, following complaints that he was obstructed from pursuing his inquiries.

By the end of September 1994 Amnesty International continued to regard the allegations of torture and ill-treatment as unresolved.

#### Case 9

**Juan Andahua Vergara**, Secretary General of the *Federación de Trabajadores de Bebidas Gaseosas y Similares del Perú* (FETRABSIP), Federation of Soft Drink Workers of Peru, and Executive Secretary of the *Confederación General de Trabajadores del Perú* (CGTP), General Confederation of Workers of Peru, died, allegedly as a result of torture by the police. He was last seen by some friends on the evening of 3 August 1992 as he made his way home from a meeting in Lima.

In the early hours of 4 August Juan Andahua was thrown, unconscious and stripped of his identity documents, into the garden of a house in the housing development of Trapiche, Carabayllo, Lima. Later that day he was transferred to the Sergio Bernales de Collique Hospital by members of the police, stationed at the Santa Isabel police station.

The following day Juan Andahua died, reportedly as a result of multiple wounds. These covered his body, including his face and neck, and were apparently indicative of torture. His body remained in the hospital morgue until 7 August when it was transferred by the police to the *Morgue Central de Lima*, Central Morgue of Lima, where it was subsequently identified by a member of his family.

In May 1993 the Peruvian Embassy in Austria informed Amnesty International that it had received a communication from the Ministry of the Interior in which it was indicated that an autopsy performed by the Central Morgue on the body of Juan Andahua had determined that he died of natural causes, namely a rupture of a brain artery. However, Amnesty International was not supplied with any evidence to support this claim. By the end of September 1994 the organization considered the case unresolved.

#### Case 10

According to the testimony of **Nancy Luz Pimentel Cuéllar**, a student at the *Universidad de Educación*

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*Enrique Guzmán y Valle*, Enrique Guzmán y Valle University of Education, (also known as La Cantuta), in Lima, she was subjected to torture by members of the security forces, who accused her of being involved with the *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Perú (Shining Path). She was apparently detained at her home in the early hours of 10 October 1992 by members of the armed forces who beat her before taking her to the *Dirección Nacional Contra el Terrorismo*, (DINCOTE), the national police anti-terrorist unit.

According to the testimony of Nancy Pimentel, she was taken up to the third floor of the DINCOTE by members of the police and made to sit, blindfolded, on a chair. She was told not to move as she was sitting on the edge of a steep drop and was forced to stay in this position all night. The following day she reportedly had electricity applied to her fingertips and head until she fainted. She was then forced to sign a declaration stating that at no time had she been ill-treated, and that she had been released in good health. On 2 November 1992 she was driven blindfolded from the DINCOTE and left in Miraflores, Lima, without her detention having been acknowledged.

Amnesty International is unaware of any independent investigation having been initiated into this case. By the end of September 1994 the organization considered the case unresolved.

#### Case 11

**Martha Huatay Ruiz**, a lawyer of the *Asociación de Abogados Democráticos*, Association of Democratic Lawyers, and a member of the *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), was detained on 17 October 1992. Prior to being sentenced to life imprisonment by a military tribunal, she was reportedly subjected to torture while held at the *Dirección Nacional Contra el Terrorismo*, (DINCOTE), the national police anti-terrorist unit. On 11 November 1992 the *Colegio de Abogados de Lima*, Lima Bar Association, issued a public statement in which it condemned the "proven" torture and humiliating treatment" to which Martha Huatay was subjected.

The Initial Report submitted by the Government of Peru to the Committee Against Torture on 22 February 1994 indicates that allegations that Martha Huatay had been tortured were investigated by the police. The report indicates that a police major, who is also a doctor, attached to the Yanamano prison where Martha Huatay is held, gave her a medical examination on 8 May 1993. The medical examination apparently proved negative. Amnesty International is concerned that the medical examination was not conducted by an independent body. The organization is also concerned that the examination was conducted almost seven months after Martha Huatay was detained by police officers attached to the DINCOTE headquarters in Lima, where the alleged torture took place.

By the end of September 1994 Amnesty International continued to regard the alleged torture of Martha Huatay as unresolved.

#### Case 12

According to press reports, **Juan Abelardo Mallea Tomaila**, an evangelist, was tortured on 21 July 1993 by members of the *Dirección Nacional Contra el Terrorismo*, DINCOTE, the anti-terrorism branch of the



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police. He was arrested by the DINCOTE on 10 July. On 13 July the DINCOTE announced to the press that he had been arrested on suspicion of having links to the *Partido Comunista del Perú (Sendero Luminoso)*, PCP, Communist Party of Peru (Shining Path), and being the author of a handwritten text which appeared on a map indicating the location of four clandestine graves situated on the outskirts of Lima. The graves contained some of the remains of the nine students and lecturer from La Cantuta University who were abducted and killed hours later by members of the *Servicio de Inteligencia del Ejército*, Army Intelligence Service, in July 1992.

The reports indicate that in the early hours of the morning of 21 July 1993, Juan Mallea was "tortured ... by officers attached to the DINCOTE and under such pressure signed a document of self incrimination". A lawyer attached to an independent human rights organization, and who represented Juan Mallea, interviewed him on 26 and 27 July. The lawyer was able to confirm the veracity of his client's account of his torture.

Amnesty International adopted Juan Mallea as a prisoner of conscience. In May 1994, 11 months after his detention, he was unconditionally released. With his release, the Government of Peru claimed that the concern surrounding his arbitrary detention was resolved. However, the authorities are not known to have carried out an investigation into the allegations that Juan Mallea was tortured and forced to sign a statement in which he admitted to have written the text on the map.

By the end of September 1994 Amnesty International considered this case of alleged torture to be unresolved.

Case 13

Mine worker **Fidel Intusca Fernández** was reportedly tortured at the military base in Puquio, Ayacucho department, in August 1990. Fidel Intusca and five others from the San Juan de Lucanas mine were called to the base to make a statement concerning an incident four days earlier, when a group of men broke into the mine and stole a lorry load of explosives. Fidel Intusca was forced to drive the lorry out of the camp but was later released by the men. After giving their statements on the incident at the army base on 6 August he and the others attempted to return to the mine, but Fidel Intusca was reportedly detained on the way by hooded and armed soldiers and taken back to the base. Several days later Fidel Intusca managed to escape and fled the base naked. According to his testimony: "They stripped me down to my underpants and socks... They chained my wrists behind my back and tied my ankles so tightly that it felt like steel. Then... they beat me in the most sensitive areas...I was tortured for more than four hours...They beat me and put me into a vat full of water until I was half-dead."

In a communication to the *Comisión de Justicia y Derechos Humanos del Senado*, Senate Commission on Justice and Human Rights, dated 19 September 1990, the Minister of Defence stated that the reports that Fidel Intusca had been tortured by army personnel were false, and were motivated, like other allegations of human rights violations, by a desire to obstruct counter-insurgency activities. Following its investigations, however, the Senate Commission concluded on 28 November 1990 that Fidel Intusca had been detained and tortured by military personnel from the Puquio army base, and recommended that the Public Ministry investigate the case. However, no judicial proceedings have been initiated.

Despite the conclusions reached by the Senate Commission, the Government of Peru informed the UN Special Rapporteur on Torture that Fidel Intusca had not been detained by the army, but had been kidnapped by miners from the San Juan de Lucanas mine, in order to cover up their part in the theft of explosives. (See Report of the Special Rapporteur on Torture, E/CN.4/1992/17, para. 177(a)). However, the Government of Peru did not appear to have submitted any evidence to substantiate this claim.

By the end of September 1994 Amnesty International considered the case as unresolved.

#### Case 14

In the case of **Juan Arnaldo Salomé Adauto**, a similar claim was made by the armed forces, namely that false statements of torture had been made in order to discredit the armed forces. The 22-year-old student was reportedly detained by men dressed in civilian clothing in the city of Huancayo, Junín department, on 24 April 1991. He was apparently taken first to a police station and then transferred to the 9 de diciembre barracks, where his detention was denied by the authorities. Juan Arnaldo Salomé apparently managed to escape on 10 June from the barracks, after which he gave a detailed account of the torture he had suffered to the Huancayo provincial prosecutor. The torture reportedly included being hung upside down, beaten, nearly drowned and having electric currents applied to his body. After his case was denounced, the political-military command based in Huancayo published an official communique claiming that Juan Salomé had never been detained by the military, and that he and civilian investigators were being manipulated by "subversive elements, as one of the methods of the campaign to discredit the forces of order".

The Initial Report submitted by the Government of Peru to the Committee Against Torture on 22 February 1994 indicates that investigations into the alleged torture of Juan Salomé have been conducted by the Mantaro Military Command Front, the Office of Forensic Medicine, and the Office of the Public Prosecutor, all in the city of Huancayo. The military authorities concluded that there was no foundation to the allegations. However, Amnesty International is concerned that this investigation was conducted by a body which is not independent. The medical certificate issued by the Office of Forensic Medicine following an examination of José Salomé appears not to have been made public, and thus Amnesty International remains unaware of its contents. This certificate, which is claimed by the government to be in the files of the Office of the Public Prosecutor in Huancayo, would appear to be part of an investigation initiated by the Office of the Public Prosecutor. Amnesty International has no knowledge of the results of this investigation.

By the end of September 1994 Amnesty International continued to regard the case of José Salomé as unresolved.

#### Case 15

In January and March 1992 respectively, two brothers, **Jorge Nabid León Ramírez** and **César Augusto León Ramírez**, were reportedly tortured and ill-treated in their homes in the city of Ayacucho, province of Huamanga, Ayacucho department. According to reports, on the night of 12 January 1992 Jorge Nabid León, on entering his home, was attacked by four armed men who identified themselves as members of the Los Lince army unit. He was allegedly beaten while being asked as to the whereabouts of his brothers. He was left with several broken ribs and needed hospitalisation. On the night of 6 March 1992 César Augusto León was also attacked on entering his home, this time by a group of unidentified men in circumstances suggesting that they were linked to the security forces. He was allegedly hit across the nose with an iron bar and lost consciousness immediately. The two men alleged that the attacks were linked to members of the army seeking to discover the whereabouts of Américo León Ramírez, one of their brothers, following his denunciation to the authorities and to the Inter-American Commission of Human Rights, of his detention and torture by army personnel in Ayacucho city in April 1989.

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The Government of Peru informed the UN Special Rapporteur on Torture that the brothers had not been arrested by military personnel nor ill-treated by members of the Huamanga garrison. (See report of the Special Rapporteur on Torture, E/CN.4/1994/31, para. 449). However, the Government of Peru would appear not to have submitted any evidence as to how and on what basis this conclusion was arrived at. By the end of September 1994 Amnesty International considered this case as unresolved.

#### Case 16

Fifteen-year-old **Olivia Pérez Fernández** was seven months pregnant when she was beaten by soldiers stationed at the Mariscal Cáceres base. According to reports, on 28 April 1992 the home of her partner, Ennegardo Púa Vela, in the neighbourhood of Mayco, Tarapoto, was raided. During the raid Olivia Pérez reportedly had a firearm held against her and was beaten. Her partner was also said to have been beaten in her presence before been taken away. His current situation is not known.

During the afternoon of the same day Olivia Pérez suffered a haemorrhage and was hospitalized in the Tarapoto Hospital de Apoyo, Support Hospital. She was discharged the following day. Four days later, on 3 May, she lost her baby. A duty doctor at the *Hospital de Tarapoto*, Tarapoto Hospital, is reported to have issued a certificate stating that the unborn baby had died.

The Government of Peru informed the Special Rapporteur on Torture that the miscarriage suffered by Olivia Pérez was the result of rough treatment by her partner, Ennegardo Púa Vela. (see the Report of the Special Rapporteur on Torture, E/CN.4/1993/26, paras 369 and 370). However, the Government of Peru appear not to have submitted any evidence substantiate this claim. By the end of September 1994 Amnesty International considered the case as unresolved.

#### Case 17

On 5 March 1994 **Miguel Liñan Mariños**, former leader of the *Comunidad Campesina de Tintayo*, Peasant Community of Tintayo, in the province of Sihuas, was detained by members of the army attached to the military base in Sihuas, province of Sihuas, department of Ancash. According to reports, during his detention he was "savagely beaten". He was released on 7 March and, by mid-April, was still under medical treatment for the injuries he sustained.

**Francisco Alejos Murillo, Tomás Espinoza Castillo, Zacarías Zavaleta Castillo and Roger Córdova Castillo** were detained on 20 March 1994, by members of the army stationed at the military base in Sihuas. The four are leaders of the independent and legally registered *Federación Provincial de Rondas Campesinas de Sihuas*, FPRCS, Provincial Federation of Civil Defence Patrol of Sihuas. After 10 days in incommunicado detention, the four were transferred into the custody of the police on suspicion of being involved with the armed opposition. However, Amnesty International believed that the accusations were false, and that their detention had been motivated by political attempts to restrict their freedom to organize and run an independent civil patrol. Four weeks after their arrest, Amnesty International declared them to be prisoners of conscience, and urged the authorities to immediately and unconditionally release them.

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The Peruvian Embassies in Austria and Germany, in separate letters to Amnesty International dated 3 and 19 August 1994 respectively, informed the organization that on an unspecified date all four men, while in the presence of their own lawyer, had told the Public Ministry attorney for the province of Pomabamba that they had not been tortured or physically ill-treated. However, the Peruvian Embassies did not include any supporting evidence to substantiate these claims. The Embassies also informed Amnesty International that the detention of Miguel Liñan was due to him threatening a woman with a knife, but made no reference whatsoever to allegations that he had been severely beaten. The Embassies informed the organization that Zacarías Zavaleta had been freed on 31 March.

According to information received by the organization in September 1994, Francisco Alejos Murillo was released in June 1994, and Tomás Espinoza Castillo and Roger Córdova Castillo were released in July 1994, following a decision by a higher court to free them unconditionally because there was no evidence of them having any links to the armed opposition. Amnesty International welcomed the belated release of these three men.

However, despite the claims made in the letters written by the Peruvian Embassies in Austria and Germany referred to above, the organization learned in September 1994 that Francisco Alejos, Tomás Espinoza, Zacarías Zavaleta, and Roger Córdova were all reportedly tortured while in custody. Amnesty International has only received details about the alleged torture of Francisco Alejos. The details are contained in a copy of his statement, dated 11 April 1994, filed before the examining judge in charge of his case. In his statement Francisco Alejos states that between 22 and 25 March 1994 he was repeatedly tortured by members of the army stationed at the military base in Sihuas. He was taken to nearby lakes where he was undressed and his hands and feet tied. He was submerged in the lakes and threatened with being killed unless he admitted to the President of the FPRCS being a member of the armed opposition. On various occasions, sticks of dynamite were tied to his body and the fuse lit, or put in his mouth and lit, but were not allowed to explode. His pubic hair was also burnt, possibly with matches. He was repeatedly kicked and threatened with being killed by repeatedly firing shots in the air. On 25 March 1994 he was forced to drink water mixed with detergent, and a firearm was introduced into his mouth.

According to Francisco Alejos' statement, on 26 March 1994 he was taken to hospital and told by a member of the Peruvian army not to mention the torture he had suffered and to claim he was spitting blood because he was suffering from tuberculosis.

On 29 March 1994 the four men were transferred into the custody of the *Dirección Nacional Contra el Terrorismo*, DINCOTE, the anti-terrorism branch of the police. According to Francisco Alejos' statement, members of the DINCOTE also forced him under torture to admit that the President of the FPRCS was a member of the armed opposition.

By the end of September 1994 Amnesty International considered the case of Miguel Liñan and of the four men attached to the FPRCS to be unresolved.

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### Case 18

Four army officers, detained following the coup attempt on 13 November 1992 against President Alberto Fujimori's emergency government, claimed that they had been tortured while in custody at the *Servicio de Inteligencia Nacional* (SIN), the National Intelligence Service, in Lima. Commander **Marko Antonio Zárate Rotta**, Commander **Enrique Aguilar del Alcázar**, Major **César Cáceres Haro** and retired Major **Salvador Carmona Bernasconi** claimed that after being detained on 13 November, they were held in incommunicado detention for at least 10 days, during which time they were subjected to torture and forced to sign declarations without having read them.

According to the army officers' written testimonies, while held at the SIN, Salvador Carmona Bernasconi had a needle stuck into his left arm and his chest. He was also held face downwards on the floor while somebody sat on him and twisted his arms. Enrique Aguilar del Alcázar claimed to have been punched in the face and wounded by the interrogator's ring. Marko Zárate Rotta was reportedly beaten on the back and the stomach and had a gun held to his head while being threatened with death. He was then reportedly tied to a chair while an electric current was applied to his wrists. César Cáceres Haro was reportedly beaten around the face which was wounded by the interrogator's ring. At an unknown location he was subjected to further torture, including being hung by his arms for a prolonged period of time.

The four army officers were transferred to the *Penal Castro Castro*, Castro Castro Prison, in Lima, on 11 December 1992 and subsequently, on 24 December 1992, to the *Cuartel Bolívar*, Bolívar Barracks, where the conditions were reportedly very poor and the prisoners had no access to medical assistance.

According to reports, an article was published on 8 January 1993 in a national newspaper containing a letter signed by General Alberto Arciniega, the President (until 23 December 1992) of the *Sala de Guerra del Consejo Supremo de Justicia Militar*, War Tribunal of the Supreme Council of Military Justice, in which he confirmed that the army officers had been tortured. Despite the complaint by General Arciniega, on 25 January 1993 the armed forces issued an official communique in which they denied that any of those imprisoned in connection with the attempted coup had been tortured.

The Initial Report submitted by the Government of Peru to the Committee Against Torture on 22 February 1994 states that the above allegations have been proved not to be true. According to the Report, this conclusion was reached on the basis of separate investigations conducted, first by representatives of the Public Ministry, and then by the military judicial authorities. The latter apparently based their conclusions on the work of criminal and medical forensic experts who examined the alleged victims. The Report does not indicate precisely when these examinations were conducted, and there is no indication whether the reports and medical certificates issued to the military authorities have been made public.

By the end of September 1994 Amnesty International continued to regard this case of alleged torture and ill-treatment as unresolved.

### Case 19

In May 1992 some **300 members** of the *Partido Comunista del Perú* (*Sendero Luminoso*), PCP,

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Communist Party of Peru (Shining Path), were held in the Castro Castro Prison, in Lima, in conditions which amounted to cruel, inhuman and degrading treatment. After confrontations during three or four days in early May between the security forces and inmates, the authorities regained control over two wings holding PCP inmates and transferred some of them to other prisons. The 300 men retained in Castro Castro Prison alleged they were subsequently denied adequate clothing, food and medical attention. They also alleged that they were kept lying down in the prison yard for nearly two weeks, that several prisoners were ill or wounded and that many of them were severely beaten on 22 May.

The Government of Peru informed the UN Special Rapporteur on Torture, in reply to concerns that the PCP prisoners who remained in Castro Castro Prison might be tortured, that the safety of all the prisoners was fully guaranteed. (See Report of the Special; Rapporteur on Torture, E/CN.4/1993/26, paras. 375 and 376). Despite this claim, Amnesty International is not aware of any independent investigation having been initiated into the above allegations. By the end of September 1994 the organization considered the case as unresolved.