

Public

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To: Health professionals
From: Medical team / Americas Program
Date: 5 September 2002

MEDICAL ACTION

Medical documentation of torture

Peru

Key words torture/ill-treatment / professional ethics

Summary

Amnesty International is seriously concerned at the lack of effective investigation and prosecution of those who commit the crime of torture in Peru. Since torture was criminalized in February 1998, in only two in cases have perpetrators been charged and punished under this law.

Doctors can play an important role in helping to secure successful prosecution of perpetrators by providing effective medical evidence. Guidelines for the medical documentation of torture are set out in the Peruvian Medical Examination Protocol for the Detection of Injuries or Death as a Result of Torture (*Protocolo de Reconocimiento Médico Legal Para la Detección de Lesiones o Muertes Resultante de Tortura*). However, Amnesty International has received no evidence that these mandatory measures are being implemented at present. Amnesty International calls for the (re)distribution of the protocol to all forensic, prison and police doctors, emphasizing that implementation of the protocol is compulsory. Amnesty International also calls for training on the identification of injuries consistent with torture.

Recommended actions & addresses

Please write letters in Spanish or English to the authorities below, using professionally-headed paper if you use this in your profession:

- § introducing yourself in your professional capacity and/or as a member of Amnesty International;
- § stating your concern at the continued occurrence of torture in Peru and the serious physical and mental health impacts associated with such acts;
- § noting that the Peruvian government has ratified the *United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* and that torture is prohibited and within Peru=s national legislation;
- § stating that detainees should be examined by a doctor upon arrival at a place of detention and on a frequent and regular basis throughout detention and imprisonment when requested and immediately before and after transfer or release;
- § emphasizing the importance of prompt and competent medical examinations in cases of torture;
- § urging the authorities to make the Medical Examination Protocol for the Detection of Injuries or Death as a Result of Torture (*Protocolo de Reconocimiento Médico Legal Para la Detección de Lesiones o Muertes Resultante de Tortura*) widely available, in particular to forensic, police and prison doctors, as a matter of urgency;

§ calling on the authorities to provide resources for training programs for doctors, in particular forensic, police and prison doctors, on the implementation of the above-mentioned protocol.

Addresses

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Please send copies to diplomatic representatives of Peru accredited to your country.

Letters to the Peruvian Medical Association

Please write to the Peruvian Medical Association National Executive to request them to write to the Minister of Health in support of the above recommendations; urge them also to take whatever steps they can themselves to ensure that the recommendations are implemented.

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Letters to Peruvian media

Please send letters to the Peruvian newspaper La Republica and the weekly magazine Revista Caretas, providing them with information about Amnesty International's concerns and requesting them to publicly support Amnesty International's recommendations and produce any articles they consider would be useful for Peruvian readers in relation to the occurrence of torture in Peru

LA REPUBLICA

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If you receive no reply from the government or other recipients within two months of dispatch of your letter, please send a follow up letter seeking a response, referring to your previous letter(s). Please check with the medical team if you are sending appeals after 5 December 2002, and send copies of any replies you do receive to the International Secretariat (att: medical team).

Monitoring of action

If you have access to e-mail you can help our attempt to monitor letter-writing actions. If you write one, two, three or more letters, please send us an e-mail and let us know. Please write in the subject line of your e-mail the index number of the action and the number of letters you write
e.g. AMR 46/006/2002 - 3

Please send your message to medical@amnesty.org Thank you.

PUBLIC

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MEDICAL CONCERN

Medical documentation of torture Peru

Introduction

Amnesty International is seriously concerned at the lack of effective investigation and prosecution of those who commit the crime of torture. Since torture was criminalized in Peru in February 1998, in only two of a number of cases documented by the organization have perpetrators been charged and punished under this law. Doctors can play an important role in helping to secure successful prosecution of perpetrators by providing effective medical evidence.

Case study: 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

On the day after his arrest, 29 June, Nazario Valencia told a 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.

Victor Valencia Porras= body was taken to a local hospital in Matucana on 1 July, where an autopsy was performed. 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 mention these injuries.

On 2 July 2001 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.

Amnesty International believes that the failure to account for the injuries on the body calls into question the finding of the inquiry, which appear unrelated to any suicidal act and urges a reopening of the inquiry.

Medical documentation of torture

Guidelines for the medical documentation of torture are set out in the Peruvian Medical Examination Protocol for the Detection of Injuries or Death as a Result of Torture (*Protocolo de Reconocimiento Médico Legal Para la Detección de Lesiones o Muertes Resultante de Tortura*). According to Article 2 of Appendix 3 of the 1998 anti-torture law, implementation of this Medical Protocol is compulsory.¹ However, 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 official guidelines that should be followed when documenting cases of torture.

The lack of training to identify injuries consistent with torture is one of the obstacles to successful prosecutions in torture cases. In some instances, forensic pathologists reportedly failed to identify victims' injuries as consistent with torture, leading to the collapse of judicial cases. In addition, Article 321 of the Penal Code, incorporated by the anti-torture law, states that torture cause 'grave pain or suffering, physical or mental'. If doctors do not identify injuries as 'grave', courts often conclude that such injuries do not amount to torture. The perpetrators are then charged with a lesser offence, such as abuse of authority. The measurement of suffering by reference to the gravity of the physical injury sustained reflects a serious misunderstanding of torture and its effects and this misunderstanding needs to be addressed by the authorities.

Case study: Lucas Huamán Cruz and Zósimo Lunasco Taype

On 1 September 1998, farmers Lucas Huamán Cruz and Zósimo Lunasco 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 days later they were released. Lucas Huamán Cruz died the next day.

According to the autopsy report, the cause of death was hypovolemic shock with rupture of the liver. The medical examiner described the following findings: 'swelling of the eyelids; bloody secretion from the nose; a generalised edema on the thorax; inflamed testicles; bloody blister on the lower 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 (...), the fifth left rib fractured'.

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'. 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.

The above case studies are two of many cases documented by Amnesty International. For further cases and information on continuing torture in Peru, see: Peru: Torture and Ill-treatment – Time to put words into practice (AI index: AMR 46/005/2002).

<http://web.amnesty.org/ai.nsf/Index/AMR460052002?OpenDocument&of=COUNTRIES\PERU>

¹ 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'.

International standard on medical documentation of torture

The *Istanbul Protocol. Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman and Degrading Treatment* (1999) is an international standard describing in detail how to obtain and report on both physical and psychological evidence of torture.

The Protocol includes the *>Principles for the Effective Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment=* (see appendix). These Principles make clear that a doctor=s examination of a person alleging torture should include:

- § a history, *including alleged methods of torture or ill-treatment, the times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms=;*
- § a physical and psychological examination; and
- § an opinion, *an interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment@.*

The *Istanbul Protocol* is available in PDF format at the web-site of the UN High Commissioner for Human Rights: <http://www.unhchr.ch/pdf/8istprot.pdf>

Amnesty International's recommendations

Amnesty International believes that all forensic, police and prison doctors and other medical practitioners in Peru should be informed of the existence of the *Medical Examination Protocol for the Detection of Injuries or Death as a Result of Tortura* (Protocolo de Reconocimiento Médico Legal Para la Detección de Lesiones o Muertes Resultante de Torture). They should be made aware of their legal duty to apply this protocol whenever relevant.

For the effective investigation of torture, Amnesty International believes that adequate resources need to be made available to train doctors, in particular forensic, police and prison doctors, to enable them to carry out detailed examinations to establish the relationship between the physical and psychological findings in the complainant and the torture that has been described.

APPENDIX

Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1]

The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment (hereafter referred to as torture or other ill-treatment) include the following: clarification of the facts and establishment and acknowledgment of individual and State responsibility for victims and their families, identification of measures needed to prevent recurrence and facilitation of prosecution or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

States shall ensure that complaints and reports of torture or ill-treatment shall be promptly and effectively investigated. Even in the absence of an express complaint, an investigation should be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission, investigations by impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards, and the findings shall be made public.

The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry.[2] Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence. Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation and shall be entitled to present other evidence. In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias or because of the apparent existence of a pattern of abuse, or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure.

Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles. [3]

A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. On completion, this report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation, and, as appropriate, indicate steps to be taken in response. Medical experts involved in the investigation of torture or ill-treatment should behave at all times in conformity with the highest ethical standards and in particular shall obtain informed consent before any examination is undertaken. The examination must follow established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

The medical expert should promptly prepare an accurate written report. This report should include at least the following:

- (a) The name of the subject and the name and affiliation of those present at the examination; the exact time and date, location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g. detention centre, clinic, house); and the circumstances of the subject at the time of the examination (e.g. nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner, threatening statements to the examiner) and any other relevant factors;
- (b) A detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, the time when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;
- (c) A record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;
- (d) An interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and further examination should be given;
- (e) The report should clearly identify those carrying out the examination and should be signed.

The report should be confidential and communicated to the subject or a nominated representative. The views of the subject and his or her representative about the examination process should be solicited and recorded in the report. It should also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report should not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such transfer.

[1] The Commission on Human Rights, in its resolution 2000/43, and the General Assembly, in its resolution 55/89, drew the attention of Governments to the Principles and strongly encouraged Governments to reflect upon the Principles as a useful tool in efforts to combat torture.

[2] Under certain circumstances professional ethics may require information to be kept confidential. These requirements should be respected.

[3] See footnote above.

[Note: The footnotes above are numbered 132-134 in the published version of the Istanbul Protocol.]