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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Fourth periodic reports due in 2003

Addendum

PERU*

[15 November 2004]

* For the initial report submitted by the Government of Peru, see document CAT/C/7/Add.16; for its consideration by the Committee, see documents CAT/C/SR.193, 194/Add.1 and 194/Add.2, and *Official Records of the General Assembly, fiftieth session, Supplement No. 44* (A/50/44, paras. 62-73). For the second periodic report, see document CAT/C/20/Add.6; for its consideration by the Committee, see documents CAT/C/SR.330 and 331, and *Official Records of the General Assembly, fifty-third session, Supplement No. 44* (A/53/44, paras. 197-205). For the third periodic report, see document CAT/C/39/Add.1; for its consideration by the Committee, see documents CAT/C/SR.399, 402 and 404 and *Official Records of the General Assembly, fifty-fifth session, Supplement No. 44* (A/55/44, paras. 56-63).

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* The annexes are available for consultation in the records of the secretariat of the Committee against Torture.

INTRODUCTION

1. In compliance with article 19 of the Convention against Torture, the State of Peru herewith submits to the Committee against Torture its fourth periodic report on the application of the Convention, covering the period 1999 to 2004. Chapters I and II of the report give the replies and comments of the State of Peru to the subjects of concern and recommendations expressed by the Committee in the course of its consideration of the third periodic report (A/55/44, paras. 59-63). Chapter III reports on the progress achieved with implementing the conclusions of the Committee against Torture based on a confidential inquiry carried out under article 20 of the Convention. Lastly it provides information on new measures and developments relating to articles 1 to 16 of the Convention.

2. This report has been prepared on the basis of data and opinions supplied by the Ministry of the Interior, Ministry of Defence, Ministry for Women and Social Development, Ministry of Education, Ministry of External Relations; National Council of the Judiciary, Judicial Power, Public Prosecutor's Office; Supreme Council of Military Justice, High-Level Multisectoral Committee of the Office of the President of the Council of Ministers; Office of the Ombudsman and National Prison Institute.

I. SUBJECTS OF CONCERN IN THE THIRD PERIODIC REPORT

3. The third periodic report of Peru (CAT/C/39/Add.1) raised many subjects of concern on the part of the Committee against Torture. It is therefore worth giving an account of the improvements made in accordance with the new human rights policy initiated by the current democratic Government, which has been in office since 28 July 2001. Each of the subjects of concern expressed by the Committee (A/55/44, para. 59) is therefore addressed in turn with the relevant comments, advances achieved and remaining difficulties in certain areas.

A. The continuing numerous allegations of torture

4. Thanks to its policy in favour of the promotion and defence of human rights, the situation currently facing the democratic constitutional Government is qualitatively different from the situation it inherited a decade ago. This is shown by the significant drop in the number of new complaints for alleged acts of torture or ill-treatment, according to the sectoral registries described below.

5. The Ministry of the Interior reported on complaints of alleged offences of torture lodged against members of the Peruvian National Police (PNP).

1. PNP directorates having registered cases of torture involving PNP personnel

a) Territorial Police Directorate – Piura

6. This directorate reported no complaints of torture for the period 2000-2002. For 2003 it reported one complaint of torture leading to the death of Edgar López Sacarranco. The event occurred inside Sullana police station on 23 February 2003. No complaints of torture were filed in 2004.

b) Seventh Territorial Police Directorate – Lima

7. No cases of torture committed by PNP members were reported in the districts of: Seguridad Ciudadana Centro, Norte, Oeste, Sur-1, Sur-2, Este-1, Este-2, Callao, Cañete and Matucana. The Public Safety Office of Huacho reported that, on 18 April 2001, the Provincial Inspectorate of Huacho issued Report No. 043-2001-JPP-PNP-H-I, based on the results of investigations carried out into alleged official misconduct involving PNP personnel of the police station of Puerto Supe, perpetrated against Carlos Alejandro Malqui Gaspar.

2. PNP directorates with no records of cases of torture committed by PNP personnel

a) Executive Directorate of Human Development

8. The directorate reported no cases of torture committed by PNP members for the last five years.

b) Executive Directorate of Administration

9. There are no records of cases of torture.

c) Directorate of National Police Intelligence of Peru

10. The directorate reported that, on the basis of records and documentation held at the Administrative Division of the Intelligence Directorate, there are no registered cases of torture committed by PNP personnel employed by the Intelligence Directorate in the last five years.

d) Anti-terrorism Directorate

11. No information was reported on cases of torture committed by PNP members in the last five years.

e) Directorate of Criminal Investigation and Support for Justice

12. None of the directorate's operational units registered cases of torture committed by its staff.

f) Anti-Corruption Directorate

13. This directorate reports that no complaints of torture involving PNP personnel were filed in the period 2001-2004.

g) Prison Safety Directorate

14. This directorate reported that no cases of torture were recorded in the last five years.

h) Fourth Territorial Police Directorate – Tarapoto

15. This directorate reported that it had no information concerning cases of torture committed by PNP members in the last five years.

i) Sixth Territorial Police Directorate – Ucayali

16. This directorate reported that it had no information concerning cases of torture committed by PNP members in the period 1999-2004.

j) Ninth Territorial Police Directorate – Ayacucho

17. This directorate reported that no cases of torture committed by PNP personnel were recorded in the last five years.

k) Eleventh Territorial Police Directorate – Arequipa

18. The directorate reported that no cases of torture committed by PNP personnel were recorded.[1]

19. As far as prisons are concerned, with the current policy of the democratic constitutional Government no complaints of torture were filed in October 2004. One complaint was received, however, for alleged ill-treatment of nine inmates of the prison of Socabaya (Arequipa). In response the prison administration, through the National Prison Institute (INPE), has initiated the following proceedings:

i) The Arequipa regional directorate of the INPE carried out an inspection of Socabaya prison;

ii) The Public Prosecutor, Forensic Physician and Ombudsman's Office were informed;

iii) The prison's Forensic Physician was asked to undertake appropriate medical examinations; reports of the examinations were delivered to the representative of the Public Prosecutor;

iv) An inquiry was initiated by the INPE's Director-General of Security. As a result of this inquiry, a report was issued and transmitted to the Institute's General Office of Internal Inspection with a view to completing the inquiry leading to the application of severe penalties against anyone responsible;

v) So far four persons have been found responsible for the reported ill-treatment.[2]

20. With regard to the 57 complaints of alleged torture brought to the notice of the Special Rapporteur on Torture of the United Nations Commission on Human Rights, an updated record of the cases with references to the various government departments involved is summarized in the following table:

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[1] Note No. 425-2004-ON/0101 dated 21 October 2004 addressed by the Minister for the Interior to the Minister for Justice.

[2] Note No. 749-2004-INPE/1 of 21 October 2004 addressed by the President of the INPE to the Minister for Justice.

Consolidated information available on 57 cases of torture reported to the Special Rapporteur

(At 10 November 2004)

Order No.	*Victims*	*State of proceedings*
1	Moisés Pacco Mayhua	In Note No. 2082-2004-IN/0105 of 16 September 2004, the Permanent Secretariat of the National Human Rights Commission of the Ministry of the Interior transmits Note No. 5066-2004-DIRGEN-PNP/SG of 9 June 2004 from the General Secretariat of the PNP General Directorate (DIRGEN) enclosing Report No. 24-2004-EMG dated 21 September 2004 issued by the Human Rights Directorate JEMG-PNP. The report gives information in section 6 relating to the case in question, based on Note No. 282-2004-XI-DITERPOL-A/EM-UNDHR of 21 June 2004 from PNP General Luis Antonio Vizcarra Girón, Territorial Police Director for Arequipa, Moquegua, Puno and Tacna, transmitting a copy of Report No. 002-2004-XI-DIRTEPOL-A/EM UNDHR dated 26 January 2004. In this report it is stated that Note No. 008-XIDTA-EPNP/PUNO/EM-UDDHH encloses Police Report No. 075-IRS-PNP-J of 7 September 1999 concerning a administrative disciplinary investigation into the theft of a YAESU transceiver radio (No. 330470), assigned to the provincial branch of the PNP in Carabaya-Macusani, and the subsequent decease of the alleged offender, Moisés Pacco Mayhua (19 years of age), which occurred in the locality of Macusani. Furthermore, the records of the Registry of Detainees for the period 1994-2000, on sheet 0496, under entries for 6 and 7 November 2000, show that John Manuel Huamán Jara (29 years of age) was arrested on 6 November 2000, at 9.30 a.m., by D/C/VC/S Homicide; it was noted in his release that he was referred to the 1st Combined Provincial Prosecutor's Office of Tacna, under Attestation No. 432-SRT-SEINCRI of 7 November 2000.
2	Esteban Miñan Castro	In Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior enclosed Report No. 004-2004-IX-DIRTEPOL-A-COASP/Sec. of the 9th Territorial Police Directorate of Ayacucho, stating that Report No. 001-2004-IX-DIRTEPOL-A-RPI-EM-UP of 18 January 2004 was received from the police region of Ica. It was reported that the PNP police station of Chincha, in Report No. 013-2004-IX-DPTA-RPI-CPCH-OP of 17 January 2004, stated that the log of the PNP police station of Tambo de Mora contains an entry under the common street events reference No. 142-99, concerning the decease of Esteban Miñan Castro, which occurred in the prison of Tambo de Mora. There is also Attestation No. 014-99-IX-RPNP-JPCH-CTM of 23 November 1999, which was drawn up by the 2nd Criminal Prosecutor's Office of Chincha. This attestation brings a criminal charge of an offence against life, body and health and aggravated homicide against INPE technicians; charges of offences against the administration of justice and abuse of authority against the prison director and INPE technicians and further charges of offences against the administration of justice and judicial duties, mentioning that the PNP has performed only external security duties in the prison of Tambo de Mora since July 1995.
3	Alejandro Damián Trujillo Llontop	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information originating in Dev. No. 124 of 21 July 2000 enclosing Report No. 71 of 12 July 2002. It is stated in this report that on 1 March 2000 SOB.PNP Alejandro Damián Trujillo Tapia lodged a complaint concerning the disappearance of his son, Alejandro Damián Trujillo Llontop. On 2 March 2000, ADTLL

Order No.	*Victims*	*State of proceedings*
		personnel of the police station of Sarita Colonia found his body on the beach AH. Daniel A. Corrión-Callao. It also states that the 11th Criminal Prosecutor's Office (Cono Norte) is in charge of the investigation, regarding the possible involvement of PNP personnel of DIVOES-Norte. Nevertheless, the Chief of Metropolitan Police (North 1) drew up Police Report No. 055-2000-JPM-NORTE-01-INSP-E2 of 15 May 2000 stating that the involvement of police personnel of DIVOES-JPMN-01 has not been established.
4	Nelson Díaz Marcos	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information originating in Dev. No. 138 of 4 August 2000 enclosing Report No. 86 of 3 August 2000. The report states that Administrative disciplinary Report No. 020-2000-SRP-T-INSP-AL of 19 May 2000 established administrative responsibility and was followed by Regional Decision No. 67-2000-XI-RPNP/UP of 13 July 2000, which ordered the transfer from active service to availability as a disciplinary measure of SOT2.PNP Carlos Laqui Marquina and SOT3.PNP Víctor Pachas Mamani, charging them with serious disobedience, negligence, abuse of authority and official misconduct and with the presumed offence of causing injury leading to the death of Nelson Fulgencio Díaz Marcos. Furthermore, with reference to Dev. No. 16 of 5 March 2001 enclosing Report No. 17 of 28 February 2001, it is stated that Reports Nos. 118, 097, 086 and 084-2000-EMG-PNP/DIPANDH were issued on 10 October, 25 August, 3 August and 31 July 2000 respectively. According to these, in Note No. 417-2000-JIS-PNP-T, the substitute investigating judge for Tacna ordered the definitive arrest of SOT2.PNP Carlos Laqui Marquina and SOT3.PNP Víctor Pachas Mamani on charges of abuse of authority (Case No. 43004-2000-0004); those charged are currently detained in the detention centre of the Judicial Police Section of Tacna.
5	José Luis Poma Payano	In Note No. 002-2004-DDHH/PJ dated 5 January 2004, the representative of the judiciary before the National Human Rights Council of the Ministry of Justice transmits Note No. 1846-2003-MPDSDJL dated 23 December 2003 from the Senior Prosecutor of the Judicial District of Lima. The latter transmits Note No. 561-03-FE-DF-EE-EFC-MP-FN dated 19 December 2003 issued by the Prosecutor's Office specialized in forced disappearances, extrajudicial executions and exhumation of illegal graves, which enclosed a police report of the same date stating that, after searches in the information system of support for the Prosecutor's Office, in the records of the Inter-American Commission of Human Rights and in all the records of the aforementioned Prosecutor's Office, no mention at all was found of José Luis Poma Payano and others. In Note No. 027-2004-DDHH/PJ dated 15 January 2003, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice refers to additional information supplied by the 26th Criminal Court of Lima, in Note No. 325-02DOT dated 12 January 2004, in connection with the trial of Luis Alberto María Cáceres Gómez de la Barra and others on charges of homicide perpetrated against José Luis Poma Payano, stating that this case has been pending in that office since 18 December 2003 as a result of an oral statement lodged on that date and is currently under investigation. In addition, in Note No. 004-2004-DDHH/PJ dated 13 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits a copy of the information supplied by the President of the High Court of Justice of Lima concerning Order No. 15253-1999 issued by the 30th Criminal Court of Lima.

Order No.	*Victims*	*State of proceedings*
6	Jenard Lee Rivera San Roque	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 134 of 4 September 2001 enclosing Report No. 88 of 9 August 2001. According to this report, on 27 June 2001 the Provincial Chief of Huacho, in Report No. 73-JPP-PNP-H/INSP, asserts that the person charged with an offence against property, Jenard Lee Rivera San Roque, was found dead at the aforementioned police station. Investigations into that death were carried out by the Criminal Investigation Division of Huacho, which reached the conclusion of "death caused by asphyxiation by hanging", as referred to in Attestation No. 54-2001-JPP-HH-DIVINCRI and in supplementary Attestation No. 078-2001-JPP-HH-DIVINCRI of 9 May and 23 June 2001 respectively, established by the 1st Criminal Prosecutor's Office of Huacho. The inspectorate of the VII-RPNP-Lima transmitted Administrative Disciplinary Report No. 211-2001-VII-RPNP-I/EI.06 of 8 May 2001, under Note No. 389-2001-VII-RPNP-JOPER-MD-OO of 17 May 2001 to the President of the High Council of Justice of the II-ZJPNP, bringing charges against Cmdte.PNP Pedro Blas Besada and May.PNP Juan Vilca Chuquillanqui, for the offence of disobedience, and against SOB.PNP Julio Castro Reyes and SOT2.PNP Mario Mayta Yupanqui for offences of disobedience and negligence.
7	Gina Requejo	
8	Pablo Waldir Cerrón Gonzales	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 122 of 20 July 2000 enclosing Report No. 75 of 28 July 2000. According to this report, with Note No. 159-2000-EMG-PNP/DIPANDH of 14 February 2000, Report No. 23-2000-EMG-PNP/DIPANDH of 10 February 2000 was transmitted to CNDDHH-MINT stating that according to Report No. 137-99-EMG-PNP/DIPANDH of 11 November 1999 Pablo Waldir Cerrón Gonzales was questioned and arrested on 30 September 1998 for assault on the person Eva Rodríguez Peredes. It is also reported that, on 31 October 1998, the Inspector of SR-PNP-Huamachuco issued Police Report No. 61-98-SR-PNP-HCO-ISR charging PNP Sergeant Élmer Pérez Arnao with serious assault against Waldir Cerrón Gonzales and with an offence against the duty and dignity of the service. The case was subsequently referred to the Combined Provincial Prosecutor's Office of Sánchez Carrión-Huamachuco. It is stated furthermore in Report No. 89 of 21 August 2001, transmitted under Dev No. 132 of 1 September 2001, that with Note No. 28-2001-III-RPNP-EMR/DDHH of 25 July 2001 the authorities of III-RPNP-Trujillo transmitted Report No. 13-2001-CPNP-HCOS dated 23 July 2001, stating that the Combined Provincial Court of Sánchez Carrión reported, in Note No. 1569-2002-SP-MCGP-JMSCH of 3 August 2001, that Investigation No. 99-511-161001JXP conducted against SOT1.PNP Élmer Pérez Arnao for the offence of causing bodily harm and illegal entry perpetrated against Pablo Waldir Cerrón Gonzales has been definitively closed. Decision approved.
9	Luis Beltrán Castillo	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 67 of 27 May 2001 enclosing Report No. 47 of 24 May 2001. According to this report, on 21 October 1998 PNP Sergeants Edwin Cárdenas Neyra and Rogel Wilcaya questioned Luis Beltrán Castillo

Order No.	*Victims*	*State of proceedings*
		Vílchez, José Tineo Quispe and Juan Pomahuacre Rivera. The first of these lodged a complaint with the Prosecutor's Office and Court of the Province of Vilcashuamán against the police officials for offences against humanity and against the public administration on the grounds that they disregarded regular police procedures established in the current rules and that he was subjected to physical ill-treatment. Also according to the report the case has been referred to the Senior Prosecutor of the 2nd Prosecutor's Office of Ayacucho, who found the sergeants guilty of an offence against humanity in the form of torture and for an offence against the public administration in the form of abuse of authority. At the conclusion of the judicial hearings of 6 December 2000, however, the Prosecutor found the police officials not guilty.
10	Juan Iparraguirre Landauro	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 154 of 25 September 2001 enclosing Report No. 88 of 24 September 2001. According to this report, on 7 June 2001 the PNP Commander Provincial Chief of Bagua Grande states, in Report No. 039-2001-SR-PNP-B/JP-U, that Juan Iparraguirre Landauro was held for questioning by personnel of the police station of Bagua Grande on account of being mentioned in several complaints for offences against property in the course of 1998, according to Attestation No. 325-98-JP-U/CPNP-BG, and referred to the Provincial Prosecutor's Office of Utcubamba under Note No. 2552-98-JP-U/CPNP-BG. The XIII-RPNP Regional Inspectorate, in Report No. 129-01-XIII-RPNP/INSPREG-SEC of 24 July 2001, also stated that it did not conduct any administrative disciplinary investigation against PNP personnel of the police station of Bagua Grande for charges of acts of torture perpetrated against Juan Iparraguirre Landauro. Further reference is made to Dev. N° 181 of 19 October 2001 enclosing Report No. 127 of 13 October 2001, in which it was concluded that there were no grounds for initiating an administrative disciplinary investigation against PNP personnel since, according to Report No. 043-2001-XIII-RPNP/EMR of 10 October 2001, both the Criminal Complaint No. 494-98-MP-FPM-U of 10 November 1998, issued by the Combined Provincial Prosecutor's Office of Utcubamba, and the Proceedings No. 98-0517 initiated by the judge specializing in criminal affairs of Utcubamba, establish a complaint for injuries incurred by Juan Iparraguirre Landauro in the course of attempted escape; furthermore, the said person did not lodge a complaint at any time with those authorities for abuse of authority or torture perpetrated by personnel of the police station of Bagua Grande. Lastly, with reference to Dev. No. 48 of 13 May 2002 enclosing Report No. 35 of 7 May 2002, it is stated that, according to Administrative Disciplinary Report No. 011-2002-XIII-RPNP-INSREG-UINV of 11 March 2002, issued by the XII-RPNP Inspectorate, it has not been established that the injuries incurred by Juan Iparraguirre Landauro were caused by personnel of the police station of Bagua Grande responsible for his questioning. Moreover, according to Legal Decision No. 157-2002-XIII-RPNP-OAJ of 19 March 2002, it was ascertained that no administrative and/or criminal responsibility could be attributed to police personnel of the police station of Bagua Grande, because the facts of the complaint could not be proved; and that the proceedings should be brought to the notice of the President of the Supreme Court and of the President of the National Human Rights Commission and Council.

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12	Pedro Tinta Vera and Juan Domingo Cerrón Núñez	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 70 of 12 April 2000 enclosing Report No. 40 of 12 April 2000. According to this report, on 20 March 1999 the personnel of DIVISE-DININCRI-PNP carried out an operation ordered by the Military Prosecutor in the district to Pte. Piedra, in the course of which the criminal organization "*Los renegados*", made up of Pedro Tinta Vera or Pedro Pinglo Taboada, Jorge Calderón Sánchez and Juan Domingo Cerrón Núñez, was captured and put out of action. The Permanent Military Court subsequently initiated criminal proceedings and, on 13 September 1999, the Military Court of II-ZJE sentenced the above-mentioned persons for aggravated terrorism, the first of them being sentenced to thirty years' imprisonment and the other two to twenty years. Furthermore, on 16 April 1999, Carmen Lourdes Mayta Cárdenas lodged a complaint with the Ministry of the Interior against personnel of the DIVISE, accusing them of abuse of authority committed against her companion, Pedro Tinta Vera, a complaint which she also lodged with the 8th Provincial Criminal Prosecutor's Office of Lima and the Office of the Ombudsman. According to Administrative Disciplinary Report No. 162-99-DININCRI-i/Inv of 13 May 1999, the now Cmdte.PNP Domingo Gil Cruzado and Cap.PNP Guillermo Osorio Alván were found guilty of offences against discipline and obedience and of negligence and were punished with four hours and four days of simple arrest, respectively, the former for not taking measures to prevent the injury incurred by the aforementioned detainee and the latter for not taking the necessary safety measures for the conveyance of the detainee Pedro Tinta Vera or Pedro Pinglo Taboada. Lastly, on 5 October 1999, the 8th Provincial Criminal Prosecutor's Office of Lima filed a criminal complaint against Cmdte.PNP Domingo Gil Cruzado, Cap.PNP Guillermo Osorio Alván and SOT1.PNP Ricardo Loli Rodríguez before the 13th Criminal Court of Lima, which initiated criminal proceedings on charges that they committed acts of torture, the warrant of commitment being amended to restricted appearance by the 1st Ordinary Proceedings Court of Lima.
13	Walter Munárriz Escobar	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 122-2004-IN/0105 dated 3 February 2004, gives information referring to Report No. 75-99-EMG-PNP/DIPANDH transmitted to the CNDDHH-MIN office. According to this report, on 20 March 1999, Walter Munarriz Escobar was stopped for questioning by SO2.PNP Gunther Cuaresma Ramos of the PNP police station of Lircay, who handed in a report of police action to SO"PNP Adolfo Ángeles Ramos. On that same date, the person arrested was released by Cap.PNP Roberto Gastiaburu Nakada, Police Commissioner of Lircay, on the grounds that the plaintiffs did not confirm their complaint. On 22 March 1999, Gladys Escobar Candiotti, mother of the alleged victim, lodged a complaint for her son's disappearance with the police station of Lircay. An investigation was undertaken by the local Prosecutor's Office, which, on 25 March 1999, reached the conclusion that the accounts given by relatives and neighbours of that locality were false. The Criminal Investigation Service of the SRPONP-Huancavelica, jointly with the representative of the Public Prosecutor's Office of the Province of Lircay, issued Police Report No. 030-FPAH-SRPNP-DEINCRI-POLFIS-H, concluding that it was not possible to locate the aforesaid disappeared person and noting that investigations were continuing to find his whereabouts.

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		Furthermore, it was established that Cap.PNP Roberto Gastiaburu Nakada, SO2.PNP Gunther Cuaresma Ramos and SO2.PNP Adolfo Edgar Ángeles Ramos, who were involved in arresting the disappeared person, were believed to have acted negligently by failing to observe proper operational police procedures during the arrest and conveyance of the aforesaid person to police premises. In addition, the Inspectorate of SRPNP-Huancavelica conducted investigations and issued Police Report No. 014-99-FPAH-SRPNP-HVCA-INSP establishing administrative disciplinary responsibility and charging Cap.PNP Roberto Gastiaburu with the offence of negligence; also charging Alfz.PNP Claudio Gutiérrez with the offence of dereliction of duty; and SO2.PNP Gunther Cuaresma Ramos and SO2.PNP Adolfo Ángeles Ramos with the offence of disobedience, the PNP officers receiving sentences of six days and the PNP non-commissioned officers ten days. Furthermore, the Joint Police Inspectorate of Ayacucho-Huancavelica undertook supplementary administrative disciplinary investigations, issuing supplementary Administrative Police Report No. 022-99-FPAH-IN/Sec., where it is concluded that Cap.PNP Roberto Gastiaburu, in addition to the offence for which he was penalized, was also guilty of the offence of disobedience and negligent performance of command; SO2.PNP Gunther Cuaresma and SO2.PNP Adolfo Ángeles, in addition to the offence recorded in the sentence order, were guilty of offences against obedience and performance of duty. The penalties imposed were increased, the reasons and nature thereof being extended. It is also reported that, on 27 April 1999, the Combined Court of Lircay ordered the arrest of Cap.PNP Roberto Gastiaburu, Alfz.PNP Claudio Gutiérrez and SO2.PNP Adolfo Ángeles Ramos, subsequent to the opening of Criminal Proceedings No. 00-053-110903X1P for the offence against humanity of forced disappearance, a sentence which the above-mentioned individuals are serving in the prison of “San Fermín”. On 27 May 1999, the Combined Court of Huancavelica ordered the immediate release of Alfz.PNP Claudio Gutiérrez Velásquez when his detention order was changed for an order of appearance subject to restrictive measures and the payment of bail. Lastly, on 3 July 1999, in Notes No. 838 and 840-99 of the Combined Court of Angaraes-Lircay Huancavelica, an order was issued for the detainment in the prison of San Fermín (Huancavelica) of the accused SOT3.PNP Carlos Valdivia Urrutia, SO2.PNP Percy Salvatierra Laura and SO2.PNP Gunther Cuaresma, all of whom were mentioned in Criminal Investigation No. 99-052 on charges of causing the forced disappearance of Walter Munarriz Escobar.
14	Humberto Zevallos Matos	In Note No. 007-2004-DDHH/PJ dated 8 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice, transmits Note No. 932-2003-MP-CSJHP dated 29 December 2003 from the President of the High Court of Justice of Huánuco-Pasco, who in turn encloses Notes Nos. 8196-2003-PSPSH/PJ dated 19 December 2003 and 6106-03 2da. SPHP dated 19 December2003, stating that, in the registry of cases the name of the accused appears in alphabetical order, but not the names of the victims, so that it is not possible to supply the requested information.
15	Catalino Daga Ruiz and Santos Daga Ruiz	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note. No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 132 of 1 September 2001 enclosing Report No. 89 of 21 August 2001. According to this report, in Note No. 28-2001-III-RPNP-EMR/DDHH of 25 July 2000 the command of III-RPNP-Trujillo submits Report No. 13-2001-CPNP-HCOS, where it is stated that a complaint was lodged

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		with the police station of Huamachuco for robbery, filed by Alberto Flores Camacho against the brothers Catalino and Santos Daga Cruz dated 23 June 1999. With regard to the accusations of torture perpetrated against the Daga Cruz brothers brought against police personnel appearing before the Combined Criminal Court of Huamachuco, the latter decided that the case should be dismissed on 1 June 2001 for insufficient evidence of the offence.
16	Luis Alberto Taipe Huamaní	
17	José Luis Rivas Antón and Roxana Gonzáles Miura	In Note No. 002-2004-DDHH/PJ dated 5 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 2593-2003-P-CSJCÑ/PJ dated 29 December 2003 from the President of the High Court of Justice of Cañete. The latter encloses Note No. 11-03-CDG-CSJC-PJ dated 24 December 2003 from the Chief of the General Police Report Distribution Centre, which states that, further to a review of criminal proceedings involving charges of offences against humanity in the form of torture (forced disappearance) perpetrated against José Luis Rivas Antón and Roxana Gonzáles Miura, it appears from the records that no case has been brought involving the aforesaid persons. Furthermore, in Note No. 011-2004-DDHH/PJ dated 7 January 2004, the above-mentioned representative transmits Note No. 2264-2003-MP-FSDC dated 31 December 2003 from the Senior Criminal Prosecutor of Cañete, enclosing Note No. 149-2003-MP-2da. FPPC dated 24 December 2003 from the 2nd Criminal Prosecutor's Office of Cañete, with certified copies of Decisions Nos. 164-01MP-2da. FPMC and 11-2001-MP-FSDC issued by the said Prosecutor's Office, from which it appears that the above complaint was dismissed definitively by the Provincial Prosecutor, subsequently being referred as a legal complaint to the Higher Criminal Prosecutor's Office, which declared it unfounded.
18	Franklin Gómez Cutipa	
19	Marino Fernández Sánchez	
20	Alejandro Ticlavilca Huere and Simial Reyes Salgado	In Note No. 044-2004-MP-FSD-JUNÍN dated 15 January 2004, the Senior Prosecutor of Junín informs the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice that, regarding the alleged arrest of Alejandro Ticlavilca Huere and Simial Reyes Salgado, taking into consideration Note No. 1460-2003-FPMJ-MP of the Deputy Provincial Prosecutor's Office of Junín, it appears that, after verifications *in situ* and examination of the records held at the police station of Chanchamayo, no information whatsoever was found regarding the arrest of Alejandro Ticlavilca Huere and Simial Reyes Salgado, between 6 and 8 March 2000, nor is there any record of a complaint for robbery against those persons.

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21	Amador Carmen Canchari	In Note No. 007-2004-DDHH/PJ dated 8 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 932-2003-MP-CSJHP dated 29 December 2003 from the President of the High Court of Justice of Huánuco-Pasco, enclosing Notes Nos. 8196-2003-PSPSH/PJ dated 19 December 2003 and 6106-03-2da. SPHP dated 19 December 2003, stating that, in the registry of miscellaneous cases the name of the accused appears in alphabetical order but not the names of the victims, so that it is not possible to supply the requested information. Information has been requested from the Public Prosecutor's Office and is currently awaited.
22	Israel Cierto Guillermo	In Note No. 007-2004-DDHH/PJ dated 8 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 932-2003-MP-CSJHP dated 29 December 2003 from the President of the High Court of Justice of Huánuco-Pasco, enclosing Notes Nos. 8196-2003-PSPSH/PJ dated 19 December 2003 and 6106-03-2da. SPHP dated 19 December 2003, stating that in the registry of cases the name of the accused appears in alphabetical order, but not the names of the victims so that it is not possible to supply the requested information. The Public Prosecutor's Office may be able to supply more information.
23	Javier Ángeles Salas, Jorge Ramón Ángeles Salas, Alejandro Trujillo Rosas and Pedro Miguel Pajuelo Rosas	In Note No. 007-2004-DDHH/PJ dated 8 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 932-2003-MP-CSJHP dated 29 December 2003 from the President of the High Court of Justice of Huánuco-Pasco, enclosing Notes Nos. 8196-2003-PSPSH/PJ dated 19 December 2003 and 6106-03-2da. SPHP dated 19 December 2003, stating that in the registry of cases the name of the accused appears in alphabetical order, but not the names of the victims, so that it is not possible to supply the requested information. The Public Prosecutor's Office may be able to supply more information. In Note No. 2082-2004-IN/0105 dated 16 September 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior transmits among other documents Police Report No. 394-DIRCOTE-OFINT-AIB, No. 2 b. containing the following text: "Police Report No. 452-D1-SUBDIRCOTE of 21 February 89. c) Other: Belongs to the OT-TA, engaging in proselytism work and the recruitment of new members in the locality of Tocache."
24	Adrián Toledo Alva	In Note No. 007-2004-DDHH/PJ dated 8 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 932-2003-MP-CSJHP dated 29 December 2003 from the President of the High Court of Justice of Huánuco-Pasco, enclosing Notes Nos. 8196-2003-PSPSH/PJ dated 19 December 2003 and 6106-03-2da. SPHP dated 19 December 2003, stating that in the registry of cases the name of the accused appears in alphabetical order, but not the names of the victims so that it is not possible to supply the requested information. The Public Prosecutor's Office may be able to supply more information.
25	Aldo Mercedes Silvestre Ramírez	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice gives information transmitted by the Senior Prosecutor's Office of the judicial district of La Libertad, in Note No. 0240-2004-MP-FSD-LL of 29 January 2004,

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		concerning the cases of Pablo Waldir Cerrón Gonzales, Catalino Daga Ruiz, Santos Daga Ruiz, Aldo Silvestre and Julio César Pinedo Vásquez. It is stated that the investigation concerning Aldo Mercedes Silvestre Ramírez was conducted before the Combined Provincial Prosecutor's Office of Virú; the case of torture involving Aldo Mercedes Silvestre Ramírez has been lodged before the judicial authority of the 4th Criminal Division of La Libertad, under Note No. 1697-2003-00-274 of 13 August 2003 from the Combined Court of Virú.
26	Bernardino Mamani Mamani	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 73 of 6 November 2002 enclosing Report No. 70 of 5 November 2002. According to this report, with Note No. 1259-2002-SR-PNP-T/SEC of 9 October 2002, the PNP subregion of Tacna transmits Report No. 013-2002-JEF-INSP-SRT-T bearing the same date, which reports that the records of the Police Inspectorate of the PNP subregion of Tacna contain a complaint dated 10 July 2000 lodged by Bernandino Mamani Mamani against SOB.PNP Melecio Cuadros Herrera, for physical ill-treatment of himself and of his younger son, Marco Antonio Mamani Yucra, events which allegedly occurred on 7 July 2000, at the PNP police station of Ilabaya, following the establishment of Administrative Disciplinary Police Report No. 31-2000-SRT-T-INSP-AI of 18 July 2000, transmitted under Dev. No. 89-2000-SRT-PNP/OA-I-MDI of 22 July 2000 to the PNP General Chief of XI-RPNP-Arequipa. The investigator responsible for the aforementioned police report found SOB.PNP Melecio Cuadros Herrera guilty, sentencing him to ten days of strict detention and SOT1.PNP Héctor Neyra Almanza also guilty, being punished with 15 days of simple detention.
27	Juan Carlos Garay Pereyra	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 61-2004-MP-FSD-DJTM dated 26 January 2004 from the Senior Prosecutor of the Judicial District of Tacna-Moquegua, reporting that the 2nd Combined Provincial Prosecutor's Office of Tacna holds a record of proceedings brought against Nelson Díaz Ramos, which were definitively dismissed; there are also records of proceedings against Juan Carlos Garay Pereyra, who has been charged, a certified dated copy being attached. It should be added that the aforementioned copies show that in Resolution No. 437-01-MP-2da. FPM.T the 2nd Combined Provincial Prosecutor's Office of Tacna decided to dismiss definitively the criminal charge of torture perpetrated against Juan Carlos Garay Pereyra by Felipe Cordero Ramos.
28	Jesús Wilber Asto Abanato	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the Judicial District of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located, enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provides new details of the requested cases and requests a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado

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		José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Higher Criminal Prosecutor's Office of Lima.
29	Roberto Carlos Gómez Arévalo	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the Judicial District of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located, enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provides new details of the requested cases and requests a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Higher Criminal Prosecutor's Office of Lima.
30	Ronald Enrique Peña García	In Note No. 091-2004-DDHH/PJ dated 5 May 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice gives information issued by the Presidents of the High Courts of Justice of Piura and Huaura. In relation to the proceedings instituted in favour of the victim Rolando Enrique Peña García, a memorandum has been issued concerning Investigation No. 571-03. This document gives details of the criminal charge No. 314-2002 dated 8 May 2002 brought by the Provincial Prosecutor's Office of Talara-Piura against Captain Jaime Marino Gastón Sayán Araujo, SOT".FAP Jerónimo Cueva Torres and SOT".FAP Raúl Torres Ortiz, for offences against humanity in the form of torture. Furthermore, with regard to the Initiating Order, it points out that the investigation must be opened in summary proceedings, as prescribed in article 1 of Act No. 26689; also that the three conditions required by article 135 of the Code of Penal Procedure, amended by Act No. 4388, are not met, according to the Political Constitution; a criminal investigation is to be initiated against those persons, in summary proceedings, and a warrant issued for restricted appearance against the accused. Furthermore, the memorandum refers to Supplementary Decision No. 474-2002 issued by the Combined Court of Sullana on 22 October 2002, recalling that Act No. 26926 of 21 February 1998 establishes a description of the offence of torture and, in its article 5, stipulates that "all trials for crimes against humanity of genocide, forced disappearance and torture shall be conducted in accordance with ordinary proceedings and in a common court", so that ordinary proceedings are requested in the present case. In response, on 26 November 2000, the Criminal Court of Talara ordered the investigation to be conducted through the ordinary procedure, extending the time allowed for the investigation to 30 days, and ordering the necessary procedures to be undertaken for complete clarification of the facts. Lastly, it is reported that, on 18 June 2003, the final report on the case was issued, expressing the opinion that the suspected offence has been confirmed,

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		as well as the criminal responsibility of the accused. An account of the proceedings was forwarded to the President of the Combined Court of Sullana, which took cognizance of the case on 6 April 2004 and arranged a hearing on 13 May 2004.
31	Luis Enrique Rojas Vásquez	With Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior encloses Report No. 004-2004-IX-DIRTEPOL-A-COASP/Sec. from IX DIRTEPOL Ayacucho, stating that the police region of Ica received Report No. 001-2004-IX-DIRTEPOL-A-RPI-EM-UP of 18 January 2004, where it is stated that the PNP police station of Chincha, in Report No. 014-2004-IX-DPTA-RPI-CPCH-OP of 17 January 2004, states that the records of the PNP police station of Chincha Baja contain Police Report No. 033-IX-RPNP-JPCH-CCHB of 19 August 2000 transmitted to the 2nd Criminal Prosecutor's Office of Chincha.
32	Jorge Jerí Juscamaita	With Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior encloses Report No. 004-2004-IX-DIRTEPOL-A-COASP/Sec. from IX DIRTEPOL Ayacucho, stating that JEINCRI-Ayacucho received Report No. 01-2004-IX-DIRTEPOL-A/JEINCRI-AJ-Adm. of 19 January 2004, stating that, with regard to the complaint for an offence against humanity perpetrated against Jorge Jerí Juscamaita, neither the JECOTE nor the JEINCRI-A have any record of a police incident concerning the aforementioned person.
33	Esperanza Mendoza Auqui	With Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior encloses Report No. 004-2004-IX-DIRTEPOL-A-COASP/Sec. from IX DIRTEPOL Ayacucho, stating that JEINCRI-Ayacucho received Report No. 01-2004-IX-DIRTEPOL-A/JEINCRI-AJ-Adm. of 19 January 2004, stating that Note No. 1137-2000-MP-4da. FPPH-Ayacucho was received on 13 October 2002 containing a complaint by Esperanza Mendoza Auqui against Cirila Castro Huamaní, Councillor of the Municipality of Huamanga and others for the offence against humanity of torture, with subsequent injuries; this led to the issue of Attestation No. 14-2001-IX-RPNP-SRA-DEINCRI/PF for offence against the person (causing bodily harm) occurring on 27 August 2000 within the provincial municipality of Huamanga, which was transmitted to the 4th FPPH by means of Note No. 242-2001-IX-RPNP-DEINCRI/PF.
34	Lenin Euclides Castro Mendoza	With Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior transmits Note No. 005-2004-OAJ/31 Brig.Inf. from the General commanding the 31st Infantry Brigade concerning cases involving Armed Forces personnel. It is reported that Lenin Euclides Castro Mendoza was allegedly assaulted by military personnel, as a result of which he died, and that the case was thought to have been referred to the Permanent Military Court of Huancayo. It is also reported that the case was investigated by the VII DIRTEPOL PNP, the Ombudsman's Office and/or referred to the 5th Permanent Military Court of Huancayo, attached to the Supreme Council of Military Justice.

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35	Pastor Pilco Cotrado	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note. No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 198 of 30 October 2000 enclosing Report No. 125 of 25 October 2000. According to this report, it was established that the following participated directly in the physical assault against the civilian, Pastor Pilco Cortrado: SOT2.PNP José Manuel Cáceres Cano, found guilty of serious infringements of obedience and negligence and of abuse of authority, and of presumed offences of abuse of authority, disobedience, negligence and abandonment of persons at risk; and SOB.PNP Clemente Quispe Cerda, found guilty of serious infringements of obedience, on the grounds that he failed to take the necessary steps to avoid the physical assault against the aforementioned civilian, and of the presumed offences of exposure to risk or abandonment of persons at risk, on the ground that he did not provide the necessary assistance. As a result these two persons were withdrawn from active duty and rendered available for disciplinary action (Region Decision No. 98-2000-XI-RPNP/OFAD-UP of 20 ctober 2000). Furthermore, as a result of investigations carried out by the Director of Special Investigations of the General Inspectorate of the PNP, the latter has established the disciplinary responsibility in this case of PNP personnel in command of the SR-PNP-Tacna.
36	Jhon Manuel Huamán Jara	
37	Carlos López Flores	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note. No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 35 of 19 April 2001 enclosing Report No. 29 of 9 April 2001. According to this report, initial investigations carried out by DEINCRI/PF personnel, it was ascertained that, on 27 November 2000, DEANDRO/SRA personnel carried out a police operation seizing 17 kg of BPC (basic paste cocaine) and the Nissan car - registration No. JO-1155 - belonging to Carlos López Flores, who succeeded in escaping with other individuals. In the course of that operation, SO2.PNP Ydelso Murrugarra Casimiro attempted to overpower the aforementioned offender, who tried to snatch his regulatory firearm. Four shots were fired, which impacted the body of the suspect and subsequently caused his death. The police action gave rise to Attestation No. 056-12-2000-IXRPNP-SRPNP-DEANDRO-A of 9 December 2000, drawn up at the 3rd Criminal Prosecutor's Office of Huamanga. The 2nd Judicial Police Area, PNP Substitute Court of Ayacucho, initiated proceedings against SO2.PNP Ydelso Murrugarra Casimiro, for a suspected offence against life, body and health (serious injuries leading to death) perpetrated by the use of a firearm against the person known when alive as Carlos López Flores. (Case No. 4221-12-00-0014). In Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior transmits Report No. 004-2004-IX-DIRTEPOL-A-COASP/Sec. from the IXth DIRTEPOL Ayacucho, enclosing Report No. 004-2004-IX-DIRTEPOL-A-COASP/Sec. from the IXth DIRTEPOL Ayacucho, stating that, in the case of the suspected human rights violation perpetrated against Carlos López Flores (deceased), the Human Rights Office of IX-DIRTEPOL-A holds a record of Report No. 56-2002-IX-RPNP-DIVANDRO/A of 21 November 2002, where it is stated that on 20 November 2000 PNP personnel of the DIVINCRI-A, arrested three persons, one of whom was Carlos López Flores, who was later taken to the regional hospital of Huamanga, suffering from bullet wounds. In the building where the arrest was conducted, one haversack and one precision scales containing articles and traces of BPC were found.

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		Furthermore, it is reported that, for the purpose of establishing the offence of illegal drug trafficking, Attestation NO. 56-2000-IX-RPNP-SRPNP-DEANDRO-A of 9 December 2000 was issued reporting the offence to the Provincial Prosecutor's Office of Huamanga. The Criminal Investigation Division of Ayacucho carried out police investigations into the presumed offence against life, body and health (aggravated homicide) perpetrated against the deceased, Carlos López Flores, by SO!PNP Ydelso Murrugarra Casimiro, which was referred in good time to the Provincial Prosecutor's Office of Huamanga, as well as to the substitute PNP Investigatory Court of Ayacucho, which assumed jurisdiction on the grounds that the events occurred in the course of police duties. Similarly, administrative disciplinary investigations were carried out by the IX-RPNP-Ayacucho Inspectorate.
38	Sara Enedina Arrieta Azcárate	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the judicial district of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located, enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provides new details of the requested cases and requests a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Higher Criminal Prosecutor's Office of Lima.
39	Lucas Huamán Cruz and Sósimo Lunasco Taype	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note. No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 122 of 20 July 2000 enclosing Report No. 75 of 18 July 2000. According to this report, Note No. 159-2000-EMG-PNP/DIPANDH of 14 February 2000 was transmitted to CNDDHH-MINT enclosing Report No. 23-2000-EMG-PNP/DIPANDH of 10 February 2000, stating that Report No. 137-99-EMG-PNP/DIPANDH of 11 November 1999 contained the information that Lucas Huamán Cruz was held at the PNP police station of San Francisco-La Mar-Ayacucho in response to a complaint of offence against property. The detainee subsequently died, and responsibility for his death was attributed to SOT3.PNP Augusto Gutiérrez Rivero, as consigned in Attestation No. 138-98-FPAH-DIVIC-PF of 13 November 1998. Furthermore, according to Dev. N° 35 of 19 April 2001 enclosing Report No. 29 of 9 April 2001, it is stated that according to Report No. 04-99-FPAH/OFAD.UPB of 9 November 1999 from the Police Front Ayacucho-Huancavelica, the PNP police station of San Francisco-La Mar-Ayacucho received Note No. 180-98-PJ-CJS-JPLSF, calling on Sósimo Lunasco Taype, Lucas Huamán Cruz and Inés Pozo Torres to assist with an investigation into an offence against property (the theft of 2,000 new soles) perpetrated against the last named, the document being received by SOT3.PNP Augusto Gutiérrez Rivero. On 2 September 1998, Lucas Huamán Cruz died at his son's home.

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		On 20 October 1999, officials of the Office of the Ombudsman and the Provincial Prosecutor's Office of San Miguel initiated investigations into the death of the aforesaid person, reaching the conclusion that the presumed perpetrator of the offence is SOT3.PNP Augusto Gutiérrez Rivero, regarding which the Criminal Investigation and Fiscal Assets Division of the Ayacucho-Huancavelica police station delivered Police Attestation No. 138-98-FPAH-DIVIC-PF of 13 November 1998. This was sent to the office of the Combined Court of La Mar-San Miguel with Note No. 3281-98-FPAH/DIVIC-PF. On the strength of the above-mentioned attestation, SOT3.PNP Augusto Gutiérrez Rivero was tried and detained at the maximum security prison of Yanamilla-Ayacucho on 14 January 1999. He was subsequently released on 5 October 1999 by order of the President of the Criminal Division of the High Court of Justice of Ayacucho and is at present serving with the CPNP-Huamanga.
40	Carlos Orellana Mallqui	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note. No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 122 of 20 July 2000 enclosing Report No. 75 of 18 July 2000. According to this report, Note No. 159-2000-EMG-PNP/DIPANDH of 14 February 2000 was transmitted to CNDDHH-MINT enclosing Report No. 23-2000-EMG-PNP/DIPANDH of 10 February 2000, stating that Report No. 137-99-EMG-PNP/DIPANDH of 11 November 1999 stated that SOT3.PNP Joel Osler Sánchez Patricio with others, under Regional Decision No. 066-IV-RPNP-UP-AMDL of 16 December 1998, was relieved of active duty and made available for disciplinary action, having been found guilty of serious infringements against discipline and duty, and of offences of negligence, abuse of authority and inflicting serious bullet wounds leading to death perpetrated against the civilian, Carlos Orellano Mallqui, in the town of Huaraz, the complaint having been lodged at the Prosecutor's Office of the I-ZJPNP-Trujillo, under Note No. 402-IV-RPNP-UP-AMDL.C of 16 December 1998. According to Dev. N° 67 of 25 May 2001 enclosing Report No. 47 of 24 … 2001, it appeared from Reports Nos. 137 and 141-99-EMG-PNP/DIPANDH of 11 and 24 November 1999 that the trial was being conducted in the 2nd Judicial Zone of the PNP – Substitute Court of Investigation of Huaral, and that SOT3.PNP Joel Osler Sánchez Patricio was detained at the prison of Huaraz since 16 December 1998, accused of the offence of inflicting serious injuries leading to death, in Case No. 99-842. He was released on 22 November 1999 by decision of the 2nd. Combined Criminal Division Áncash-Huaraz, in accordance with Note No. 744-NAC-SSM-CSJA-N of 22 November 1999 rejecting jurisdiction. Lastly, according to the source MASPOL-PNP of 3 January 2004, SOT3.PNP Joel Osler Sánchez, by RD. No. 10175 of 21 October 2002, was transferred from a situation of availability to one of retirement, having reached the time limit for availability, to which he had been transferred as a form of disciplinary action.
41	Wilmer Sánchez Silva	In Note No. 291-2004-IN/0105 dated 8 March 2004, the Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior transmitted Report No. 001-04-REGPOL-AMAZ/DIVPOL-B/JEFICAJ-BG from the Police Division of Bagua, concerning details of the investigation carried out in relation to the arrest of Wilmer Sánchez Silva on 21 February 1998 by police personnel of the district of Bagua Grande, Province of Utcubamba, Department of Amazonas, on charges of homicide and illegal drug trafficking.

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		Supplementary Attestation No. 014-98-XIII-RPNP-DIVINCRI-U was also found, containing charges of an offence against life, body and health, by homicide using a firearm, involving the aforesaid Wilmer Sánchez Silva, and was later referred to the Combined Provincial Prosecutor's Office of Utcubamba. Subsequently, with Complaint No. 402-97, the charge was referred to the office of the Specialized Criminal Court of Utcubamba, whose Reports Secretary asserted that it was then referred to the Combined Division of Chachapoyas under Note No. 98-0127 of 8 July 1998, and later to the High Court of Justice of Lambayeque, where the aforesaid Wilmer Sánchez Silva was found not guilty of the offences of homicide and illegal drug trafficking. Furthermore, Police Report No. 11-98-XIII RPNP-IR of 18 April 1998 concerning the outcome of the administrative disciplinary investigation relating to the suspected physical ill-treatment of Wilmer Sánchez Silva by PNP personnel of the former DIVINCRI XIII-RPNP-U was found in the records of the Morals and Discipline Office of the DIVPOL PNP Bagua. The same office also produced Decision No. 142-98-XIII-RPNP-AJ of 22 April 1998 ordering the records of proceedings to be archived in the appropriate unit to serve as precedent.
42	Luis Omar Cruz Fano	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, with Note No. 079-2004-IN/0105 dated 23 January 2004, gives information based on Dev. No. 16 of 5 March 2001 enclosing Report No. 17 of 28 February 2001. According to this report, Report No. 146-2000-EMG-PNP/DIPANDH of 20 December 2000 gives an account of the arrest of Luis Omar Cruz Fano at the PNP police station of Aucayacu on 24 ay 1998, having been recorded in Attestation No. 040-98-SRPNP-LP/CA as charged with offences against property perpetrated against Carlos Teofanes Rubín Baldeón. Furthermore, according to the Public Prosecutor's Office of that locality, the aforesaid person lodged a complaint on 15 May 1998 against SOT3.PNP Abelardo Tipismana Espino, SO1.PNP Fredy Rincón Garay and SO1.PNP Rodolfo Chinchay Ricra, for the offence of abuse of authority (arbitrary act). At the conclusion of the criminal investigation, the Provincial Prosecutor of Aucayacu, in a ruling of 6 November 1998, withdrew charges against the aforementioned PNP personnel. The police station of Aucayacu issued Supplementary Attestation No. 018-00-SRPNP-LP/CA of 25 May 1998 charging Luis Omar Cruz Fano and others for offences against public security (common risk – illegal possession of arms) and offences against the administration of justice (against the jurisdictional function) perpetrated against Carlos Teofanes Rubín Baldeón.
43	Armando Alex Verdón Huamancóndor and his friend Max	With Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 61-2004-MP-FSD-DJTM dated 26 January 2004 from the Senior Prosecutor of the judicial district of Tacna Moquegua, reporting that information was provided by the Prosecutor's Offices of that jurisdiction, more specifically by the 3rd Combined Provincial Prosecutor's Office of Tacna, according to which the complaint lodged by Armando Alex Bedón Huamancóndor for torture causing injury was investigated at the Central Police Station, which issued Police Attestation 65-SRT bringing charges of wrongful accusation against the public administration by Armando Alex Bedón Huamancóndor, to the detriment of SO.PNP Fredy Mario Delgado Barrios and Antonio Remigio Díaz. The case was referred to the Combined Provincial Prosecutor's Office for Customs and Excise Offences (now disactivated), which issued a Decision of Final Dismissal No. 527-99 dated 21 September 1999, enclosing a certified copy thereof.

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44	Henry Sócola	
45	José Antonio Rojo Sánchez	With Note No. 050-2004-DDHH/PJ dated 10 February 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 086-S-CSJM/AG.01 dated 27 January 2004 from the Secretary-General of the Supreme Council of Military Justice, which on instructions from the Rear Admiral President of that Council stated that there were no criminal and/or judicial records concerning the case of José Antonio Rojo Sánchez.
46	Ezequiel Agurto Nole	With Note No. 050-2004-DDHH/PJ dated 10 February 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 086-S-CSJM/AG.01 dated 27 January 2004 from the Secretary-General of the Supreme Council of Military Justice, stating, on instructions from the Rear Admiral President of that Council, that Case No. 3100199-0585 brought before the Standing Court Martial of the Peruvian Air Force, on behalf of Airman Ezequiel Agurto Nole of the Peruvian Air Force, was dismissed on 18 October 2002.
47	Christian Preciado Noe	With Note No. 050-2004-DDHH/PJ dated 10 February 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 086-S-CSJM/AG.01 dated 27 January 2004 from the Secretary-General of the Supreme Council of Military Justice, which, on instructions from the Rear Admiral President of that Council, stated that there were no criminal and/or judicial records concerning the case of Christian Preciado Noe.
48	Henry Francisco Hurtado Díaz	
49	Edgard Rosas Platero and Edwin Lupaca Lupaca	With Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 61-2004-MP-FSD-DJTM dated 26 January 2004 from the Senior Prosecutor of the Judicial District of Tacna Moquegua, reporting that the Combined Provincial Prosecutor's Office of Candarave conducted Investigation No. 2002 047, concerning charges of offences against life, body and health in the form of homicide perpetrated against Edwin Lupaca Lupaca, brought against Rolando Ortiz Ortega, confirmed on 5 December 2003 after approval.
50	Francisco Perca Carbajal	
51	Julio César Pinedo Vásquez	With Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits information supplied by the Senior Prosecutor's Office of the Judicial District of La Libertad, in Note No. 0240-2004-MP-FSD-LL of 29 January 2004, following a request for information from the Provincial Criminal Prosecutor's Offices of Trujillo concerning the complaint by Julio César Pinedo Vásquez, reporting that no such complaint has been recorded, as a result of which further details have been requested.

Order No.	*Victims*	*State of proceedings*
52	Pedro Rafael Marino Núñez	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the Judicial District of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located and enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provided new details of the requested cases, and requested a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Main Criminal Prosecutor's Office of Lima. Furthermore, Note No. 394-2004-MP-DSDJL dated 28 January 2004 was received from the Senior Prosecutor's Office of the Judicial District of Lima, which transmits Note No. 14-2004-4°FPPL-MP-FN dated 28 January 2004, of the 4th Provincial Criminal Prosecutor's Office of Lima, concerning the complaint brought against personnel of the DIVINCRI ESTE, for offences against life, body and health perpetrated against Pedro Rafael Marino Núñez, indicating that the complaint was referred to the Provincial Prosecutor's Office of Ventanilla on 4 November 1997. In addition, Note No. 18-2004-9°FSPL dated 22 January 2004 was transmitted by the 9th Senior Prosecutor's Office of Lima, reporting that information has been obtained from the Reports Office of the 2nd Corporative Criminal Division for Ordinary Proceedings with Imprisoned Defendants, now the 2nd Criminal Division for Imprisoned Defendants, stating that the latter Criminal Division, on 27 November 1998, rejected the case against Richard Hugo Sedano Fenco and others on charges of aggravated homicide and others, perpetrated against Pedro Rafael Mariño Núñez and others, and decided to refer the proceedings to the Reports Office of the Criminal Division. It also asserts that the then 10th Criminal Division, now the 4th Criminal Division for Imprisoned Defendants, on 12 August 1999 passed sentence, which was followed by an annulment appeal on 5 October 1999, after which the Criminal Division of the Supreme Court rejected the annulment appeal and referred the proceedings back to the 28th Criminal Court of Lima on 28 March 2000.
53	Christian Raffo	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the Judicial District of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located and enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provides new details of the requested cases and requests a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo

Order No.	*Victims*	*State of proceedings*
		Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Higher Criminal Prosecutor's Office of Lima.
54	José Antonio López Alvarado and Juan Carlos Martínez Morán	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the Judicial District of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located and enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provides new details of the requested cases and requests a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Higher Criminal Prosecutor's Office of Lima.
55	Ricardo Solano Asto	The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, with Note No. 122-2004-IN/0105 de dated 3 February 2004, gives information referring to Report No. 136-99-EMG-PNP/DIPANDH transmitted to the Office of the National Human Rights Commission. According to that report, following Attestation No. 133-SRPNP-CCP-CERRO DE PASCO of 31 December 1997 issued at the Provincial Prosecutor's Office of Cerro de Pasco under Note No. 481-SRPNP, that Prosecutor's Office assumed jurisdiction for the investigation, issuing Prosecution Charge No. 010-98 of 13 January 1998 before the 2nd Criminal Court of Pasco against those responsible for the decease of Ricardo Solano Asto; the EMG-PNP DIPANDH subsequently issued Report No. 046-98-EMG-PNP/DIPANDH of 25 June 1998 and Report No. 6-98-EMG/PNP-DIPANDH of 4 May 1998, which were transmitted to the National Human Rights Commission of the Ministry of the Interior.
56	Saúl Robinson Tello Muñoz	With Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits information supplied by the First Criminal Court of Coronel Portillo, Judicial District of Ucayali, enclosing a memorandum, from which the following emerges. On 16 January 2004, Note No. 17617-2003-1JPCP-CSJUC/PJ dated 23 December 2003 was received from the judge of the First Criminal Court of Coronel Portillo, of the Judicial District of Ucayali, who reports through the Chief of General Distribution that his court holds records of criminal proceedings registered under No. 225-97, against Watson Grandez Paredes, for the offence of abuse of authority perpetrated against Saúl Robinson Tello Muñoz, the proceedings having been suspended. In order to obtain more details, in Note No. 29-2004-DDHH/PJ the court was requested to communicate the reasons put forward by the Chief of the General Distribution Centre and certified copies of the aforementioned criminal proceedings.

Order No.	*Victims*	*State of proceedings*
		On 28 January 2004, Note No. 0364-2004-1JPCP-CSJUC/PJ dated 21 January 2004 was received from the judge of the First Criminal Court of Coronel Portillo of the Judicial District of Ucayali, stating that, through an initiating order dated 25 May 1997, an investigation was opened under No. 225-97 in summary proceedings against Watson Grandez Paredes, on charges of the offence of abuse of authority and simple injury perpetrated against Robinson Tello Muñoz, leading to a final ruling by the Public Prosecutor's Office ordering the definitive dismissal of the case; on 27 October 1997 the court ordered its suspension, the case currently appearing in the records of the High Court of Justice.
57	Nancy Patruska Del Campo Cáceres	In Note No. 042-2004-DDHH/PJ dated 29 January 2004, the representative of the judiciary before the National Human Rights Commission of the Ministry of Justice transmits Note No. 248-2004-MP-DSDJL dated 14 January 2004 from the Senior Prosecutor of the Judicial District of Lima, who transmits Note No. 004-2004-MPUFPPL-MP-FN with annexes, dated 6 January 2004, from the Chief of the Reports Division of the Provincial Criminal Prosecutor's Offices of Lima, stating that information requested through the Support System for Prosecution Work had been located and enclosing Report No. 004-04-MICSIATF/RUDE-MPUFPPL-MP-FN. This provides new details of the requested cases, and requests a report on the current situation and the issue of certified copies of the main documents of investigations conducted on behalf of the victims: Poma Payano José Luis, Tinta Vera Pedro, Cerrón Núñez Juan Domingo, Asto Abanato Jesús, Gómez Arévalo Roberto, Arrieta Azcarate Sara Enedina, Pedro Marino Núñez, López Alvarado José Antonio, Martínez Morán Juan Carlos, Christian Raffo and Nancy Patruska Del Campo Cáceres; relating to the offence against humanity of torture (forced disappearance) in the 4th, 8th, 10th and 22nd Provincial Criminal Prosecutor's Office of Lima and the 4th and 9th Main Criminal Prosecutor's Office of Lima. The Permanent Secretary of the National Human Rights Commission of the Ministry of the Interior, in Note No. 122-2004-IN/0105 dated 3 February 2004, gives information referring to Report No. 136-99-EMG-PNP/DIPANDH transmitted to the Office of the National Human Rights Commission. According to this report, with regard to the arrest and rape of Nancy del Campo Cáceres, Attestation No. 35-D1-DINCOTE was issued on 21 May 1997, bringing charges of terrorism, transmitted with Note No. 2029-DINCOTE of the same date to the Standing Provincial Prosecutor's Office of Lima, and, concerning the same case, DIPANDH issued Report No. 109-98-EMG-PNP/DIPANDH of 11 August 1998 transmitted to the Office of the National Human Rights Commission. With Note No. 2082-2004-IN/0105 from the Permanent Secretariat of the National Human Rights Commission of the Ministry of the Interior, enclosing among other documents Police Report No. 394-DIRCOTE-OFINT-AIB numeral 2.b) Documentos Formulados, containing the following text: "Attestation No. 035-D1-DINCOTE of 20 May 1997 concerning the person arrested on charges of terrorism. Supplementary Attestation No. 043-D1-DINCOTE of 5 June 1997 bringing charges of treason." No. 2.c) other: "On 2 June 1998 was released from EPMSM-Chorrillos".

21. As may be appreciated, the updated information refers to actions undertaken by a variety of State bodies in response to events which occurred chiefly in the period prior to 1999, regarding which administrative, criminal or judicial investigations are currently being conducted or which have been shelved in accordance with administrative, investigatory or judicial decisions. The information reflects the State's response to complaints and charges and confirms its determination not to tolerate the practice of torture or cruel, inhuman or degrading treatment.

22. This situation has also been recognized by the Truth and Reconciliation Commission (TRC), which, according to its mandate[3] was given the task of bringing to light, among other violations of human rights, the practices of torture which occurred in Peru during its period of investigation, from 1980 to the year 2000. The TRC's final report contains a section headed "Torture and other cruel, inhuman or degrading treatment",[4] in which it concluded that the practice of torture, whether committed by subversive groups or by State agents, at certain times and in certain places, constituted a systematic and generalized practice.

23. With regard to torture committee by State agents, the Truth and Reconciliation Commission reached the following conclusion:

> "The Commission concludes that during the period 1983 to 1997 agents of the Peruvian State engaged in systematic and generalized torture. The Commission has recorded 4,826 cases of torture perpetrated by agents of the State, self-defence committees and paramilitaries, of which 4,625 are attributed exclusively to State agents. These cases demonstrate that occurrences of torture or other cruel, inhuman or degrading treatment were not isolated events but on the contrary were practices which became institutionalized and were accepted as 'standard methods' of combating subversion, becoming more generalized and widespread over the years."[5]

24. With regard to torture practiced by the subversive group Sendero Luminoso (Shining Path), the Truth and Reconciliation Commission concluded that:

> "The generalized nature of the practice and the fact that it occurred in the context of conscious attacks against the civilian population leads the Commission to conclude that the torture practiced by Sendero Luminoso from 1983 to 1993 constituted a crime against humanity."[6]

25. In its final report, the Truth and Reconciliation Commission condemned these practices and established the legal responsibility of State agents committing torture in the following terms:

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[3] The mandate establishes that the Truth and Reconciliation Commission "Shall focus its work on the following events …: a) killings and abductions; b) enforced disappearances; c) torture and other serious injury; d) violations of the collective rights of the Andean and native communities of Peru; and e) other crimes and serious violations of individual rights" (article 3 of Supreme Decree 065-2001- PCM).

[4] Tome VI, section 4: Crimes and human rights violations, Chapter 1.

[5] Final Report of the Truth and Reconciliation Commission, Tome VI, Chapter 1, subchapter on "Torture and other cruel, inhuman or degrading treatment", Conclusion 1, pg. 258. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[6] Ibid, pg. 209. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

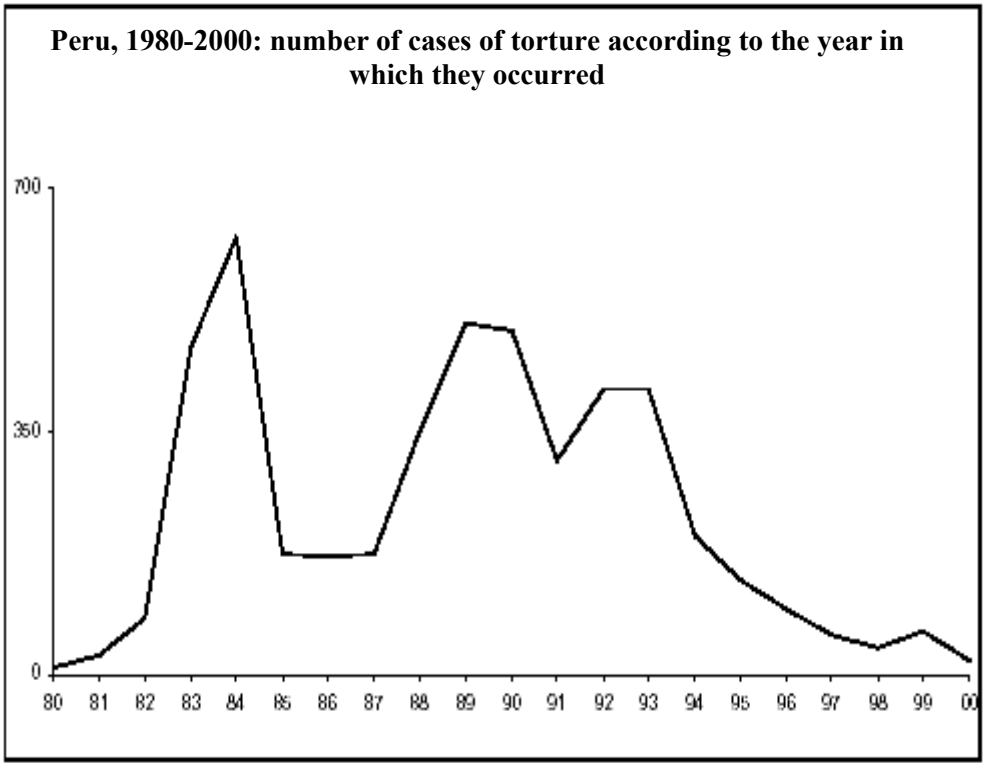
"State agents and those who, subject their authorization and/or consent, planned, decided, ordered or applied torture and those who cooperated with them are legally responsible on an individual basis for their acts. Chiefs are equally responsible for the acts of their subordinates, should they fail to punish them or fail to seek their punishment once the acts are known."[7]

26. Clearly, from the point of view of the Committee against Torture and of the international obligations of the Peruvian State under the Convention against Torture, whatever acts may be attributed to non-State agents are irrelevant. Nevertheless, given the magnitude of the phenomenon, this information is submitted in order to illustrate the process of violence experienced by Peru from 1980 to 2000.

27. With regard to the complaints of torture received by the Truth and Reconciliation Commission: "Out of 6,443 acts of torture and other cruel, inhuman or degrading treatment recorded by the Truth and Reconciliation Commission [in testimonies], the highest proportion (75%) relates to actions attributed to State officials or persons acting subject to their authorization and/or consent".[8]

28. Despite this, the following table drawn up by the Truth and Reconciliation Commission shows that the practice of torture by State agents diminished considerably after 1995.[9]

Peru, 1980-2000: number of cases of torture according to the year in which they occurred



[7] Ibid, Conclusion 8, pg. 259. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[8] Ibid, pg. 183, available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[9] Ibid, pg. 220, available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

29. Since it was first started, the Office of the Ombudsman has been receiving complaints concerning the violation of various fundamental rights, especially those related to physical integrity, by personnel of the National Police and the Armed Forces. Complaints have also been received regarding the violation of this right by officials of the National Prison Institute (INPE).

30. With regard to cases attributed to the Armed Forces, the Office of the Ombudsman has dealt *ex officio* or on request with a significant number of complaints of alleged torture and cruel, inhuman or degrading treatment having occurred on military premises. The victims of these acts were mostly young persons carrying out their military service, which was compulsory until Act No. 27178 making it voluntary.

31. In the course of 1998, the Office of the Ombudsman looked into eight cases of alleged torture and cruel, inhuman or degrading treatment. In 1999, the number of complaints received and investigations carried out *ex officio* increased significantly, with no less than 49 cases recorded in that year alone. In response to the Ombudsman's concern for the conditions under which military service was performed and in view of the considerable number of case affecting life and personal integrity received, the institution decided to prepare a report on the subject.

32. Defence Report No. 42 on "The right to life and personal integrity in the performance of military service in Peru", published in December 2002 (annex 1), covers the period from April 1998 to August 2002 and is based on the analysis of 118 cases of alleged torture and cruel, inhuman or degrading treatment connected with the performance of military service.[10] It should be noted that, since the above report was published, the Office of the Ombudsman has received 26 cases concerning such violations between September 2002 and the beginning of the current year.

33. The Office has also been informed of cases of attacks on personal integrity committed by personnel of the Peruvian National Police (PNP). These events occurred chiefly within police premises or during operations conducted by certain members of the PNP. The violations took the form at times of cruel, inhuman or degrading treatment and, at other times, of presumed acts of torture.

34. Thus, between April 1998 and December 2003, the Office of the Ombudsman was informed of and investigated *ex officio* or on request 292 cases of alleged torture and cruel, inhuman or degrading treatment attributed to officials of the Peruvian National Police. These cases were registered gradually from 1998 onwards, reaching an alarming level in 2000, when 94 cases were reported of violations of personal integrity. From then onwards, the number of cases began to decline, though it did not disappear, considering that a significant number of complaints in that respect were received in the years 2001, 2002 and 2003.

35. Lastly, with regard to cases of violations of personal integrity attributed to personnel of the National Prison Institute (INPE), during the period 1999-2004 the Ombudsman received

[10] Defence Report No. 42 also gives an analysis of the cases of the deaths of young recruits investigated by the Ombudsman during the same period.

37 complaints of alleged torture and cruel, inhuman or degrading treatment perpetrated against the inmates of certain prisons.[11]

B. The lack of "independence" of those members of the judiciary who have no security of tenure

36. The independence of the judiciary is essential in a democratic government, since it is the best way of ensuring the security of citizens. Magistrates obey the Constitution and the laws. One of the ways of guaranteeing the independence and autonomy of judges is by their proper evaluation and training.[12]

37. According to the current Constitution, the National Council of the Judiciary is responsible for the selection and appointment of judges and procurators (art. 150). The training of magistrates is conducted by the National Academy of the Judiciary, which is part of the Judicial Power (art. 151 of the Constitution). From the composition of these two institutions, their mode of operation and their functional conduct under the current democratic regime it may be deduced that they exercise their attributes autonomously and independently of the Executive Power and other State organs and private individuals. This is the main characteristic which distinguishes their performance from what it used to be in the period running from the third periodic report to the Committee against Torture until November 2000, when the Government of Democratic Transition took office, to be followed by the present Democratic Constitutional Government.

38. On 7 September 2000 the National Council of the Judiciary approved Regulations governing the evaluation and approval of judges and prosecutors (annex 2). The Council's powers were restored by Act No. 27368 of 7 November 2000 (annex 3).[13] Since 2001, it has been responsible for the evaluation and selection of judges. At that time, the proportion of provisional appointments in the Public Prosecutor's Office was almost 90 per cent and in the judiciary 85 per cent. In the last three years, however, these proportions have declined significantly. Among prosecutors the proportion has been reduced to between 30 and 35 per cent, while some 30 per cent of judges are still appointed on a provisional basis in the judiciary.[14] The National Council of the Judiciary itself gives more precise figures, with estimates of 12 per cent of provisional appointments in the judiciary (annex 4) and 39 per cent in public prosecution (annex 5).

39. These figures reflect a substantial change compared with those of the third periodic report to the Committee, when the provisional aspect was a factor that directly affected the independence of members of the judiciary who had no security of tenure. Instead, the National Council of the Judiciary has become a bulwark of independence and autonomy in the exercise of

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[11] Note DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Deputy Ombudsman for Human Rights and Disabled Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[12] Note 118-2004-DDHH/PJ of 31 August 2004 transmitted by the representative of the judiciary before the National Human Rights Council to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[13] Note No. 1755-2004-P-CNM of 3 September 2004 transmitted by the President of the National Council of the Judiciary to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[14] Note No. 118-2004-DDHH/PJ of 31 August 2004 transmitted by the representative of the judiciary before the National Human Rights Council to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

its functions, being able to represent various institutions of civil society without interference from the political authorities or any other. The Council in fact guarantees the independence of judges and their security of tenure. Judges and prosecutors may be removed only in two circumstances:

a) By destitution, following the due disciplinary procedure, if they have breached the law;

b) By non-renewal, following the due procedure of evaluation to which all judges and prosecutors are subject every seven years.

40. The disciplinary procedure is one of the instruments by which the conduct and suitability of judges is evaluated. It is initiated whenever charges are brought against a judge and in accordance with an established order of proceedings, respecting the person's right of defence. It is followed by a substantiated decision either dismissing the charges brought against the judge in question or confirming the charges, in which case the person is excluded from the judiciary.

41. The renewal of office procedure occurs every seven years. Its purpose is to evaluate the conduct and suitability of judges in the performance of their duties, in the light of the jurisprudence they have produced, their merits, reports of the professional colleges and associations of lawyers, and whatever records are held concerning their conduct. In each case the person is allowed a personal interview. The Constitutional Court decided that the renewal procedure would not affect tenure in the cases Almenara Bryson of 27 January 2003 (annex 6) and Urrelo Álvarez of 12 May 2003 (annex 7).

42. The continuing tenure of judges is guaranteed "so long as they observe conduct and competence appropriate to their functions" by article 146.3 of Peru's Political Constitution. The Constitutional Court has imposed two constitutional limits in this respect. Firstly the right to remain in office is subject to the observance of conduct and competence appropriate for the office. The second limit governs the time of office allowed, since the appointment of judges must be confirmed by the National Council of the Judiciary after seven years in office. In other words, once that period of seven years has elapsed, the right to remain in office may no longer be assumed. The appointee may expect to remain in office provided that he or she successfully passes the renewal procedure.[15]

43. With regard to improving security of tenure, this is not merely a quantitative but also a qualitative process, insofar as it is aimed at supporting the cause of justice. The criteria for selecting and evaluating judges are as follows:

a) Equal opportunity for all those who, complying with the requirements of the law, seek a post in the judiciary as judge or prosecutor;

b) Prime importance attached to the technical legal capacity of applicants and their moral background.

This is a way of overcoming the play of party interests and political alliances which dominated the scene until the year 2000 and it reflects the determination of the National Council of the

[15] Note No. 1755-2004-P-CNM of 3 September 2004 transmitted by the President of the National Council of the Judiciary to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

Judiciary to exercise its constitutional powers responsibly and in line with the high expectations of civil society and of the public in general by contributing to the establishment of an independent judiciary and prosecution.[16]

C. The period of incommunicado pre-trial detention of 15 days for persons suspected of acts of terrorism

44. The Truth and Reconciliation Commission (TRC) has also given its opinion on incommunicado detention imposed by anti-terrorist laws for anyone suspected of terrorism. In a subchapter entitled "The administration of justice", the TRC expressed the view that: "This regime of incommunicado detention for those arrested on charges of terrorism was used indiscriminately and arbitrarily by the police with the intention of isolating detainees from any type of contact with the outside world and without the benefit of any judicial supervision."[17]

45. With regard to the extension of the period of detention for suspected terrorists, the TRC also expressed the view that: "This extension of the period of detention for the investigation of this new type of crime does not meet with any constitutional justification, since the Constitution is clear, strict and specific with regard to both the legal conditions for deprivation of liberty and its duration".[18]

46. Incommunicado pre-trial detention of up to 15 days was declared unconstitutional by the Constitutional Court in its decision of 3 January 2003, issued in Order No. 010-2002-AI/TC (annex 8). The Court stipulated that incommunicado detention may be inflicted if warranted by the circumstances and subject to specific, strict conditions. This implies that "there is no absolute right to not being held incommunicado. It may be decided exceptionally in cases where it is unavoidable and on the condition that it serves to investigate a crime which is considered extremely serious" (para. 115). The Constitutional Court adds that "it is conditional according to the Constitution on an objective, reasonable justification. Nevertheless, regardless of the objective and reasonable basis for such detention, it may not be applied for any other purpose than the investigation of a crime, in the form and for the time established by law". On this point, the Constitutional Court of Peru refers to the case law of the Inter-American Court of Human Rights, which has established that "incommunicado detention is an exceptional measure the purpose of which is to prevent any interference with the investigation of the facts" (*Suárez Rosero* case*,* Ecuador, para. 51).

47. The Constitutional Court also stipulates which authority is responsible for applying incommunicado detention and explicitly establishes that, even though it is not stated in the Constitution, "it must be applied by a criminal court, insofar as it concerns a measure that restricts a fundamental right" (para. 116).

48. Lastly, the Constitutional Court expresses the view that the right of defence should not be affected by incommunicado detention, since the second paragraph of article 2 of Act No. 26447 provides for the presence of defence counsel in police investigations and during the interview

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[16] Note No. 1755-2004-P-CNM of 3 September 2004 transmitted by the President of the National Council of the Judiciary to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[17] Final Report of the TRC, Tome VI, Chapter 1, subchapter on "Breach of due process", pg. 398. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[18] Ibid, pp. 199 and 400. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

with a client, which may not be restricted "even though the detainee has been sentenced to incommunicado detention" (para. 118).

49. The Constitutional Court has therefore deemed article 12 d) of Decree Law No. 25475 unconstitutional, which meets the legitimate concern expressed by the Committee against Torture.

D. The use of military courts to try civilians

50. The Truth and Reconciliation Commission (TRC) expressed opposition to the use of military courts for trying civilians in the following terms: "The trials of civilians in military courts affected not only the right to due process and to natural judgement, but also the independence of the judicial function, considering that the members of these military courts are appointed and removed by the Executive Power and, in addition, are serving members of the Armed Forces (…). Owing to the very nature of military institutions, military courts were not and are not suitable for the trial of civilians".[19]

51. The TRC also asserted that the use of such courts breached the natural judgment principle: "On the assumption that military justice is not the form of justice which is naturally applicable to civilians who have no military duties, withdrawing jurisdiction from civil courts in order to transfer it to military courts presupposes a clear departure from the type of jurisdiction decided by law and is therefore in breach of the principle of natural judgment".[20]

52. Further to the decision of the Constitutional Court in Order No. 010-2002-AI/TC of 3 January 2003 (annex 8), all trials against civilians on charges of treason have been declared null and void. The Constitutional Court urged the Legislative Power to regulate procedures for new trials, at the request of the person concerned (para. 103). As a result in Legislative Decree No. 922 of 11 February 2003 published on 12 February 2003 (annex 9), the military courts immediately renounced jurisdiction over trials for that offence and referred all treason cases to the ordinary courts. Since that date there have been no proceedings against civilians on charges of treason or aggravated terrorism conducted in military courts.[21]

53. In accordance with article 2 of Legislative Decree No. 922, the Supreme Council of Military Justice handed over to the National Terrorism Division of the Judiciary all cases involving charges of treason covered by Decree Laws Nos. 25659 and 25880, regarding which the Committee against Torture expressed concern. In accordance with article 3 of the above decree, the National Terrorism Division annulled all judgments and trials on charges of treason by the military courts, with respect both to those convicted and to the grounds for their conviction. This annulment extends to the cases of accused who are absent or contumacious with respect to prosecution charges.

54. In other words, there is currently not a single civilian on trial in a military court on charges of treason, which meets the Committee against Torture's concern.

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[19] Ibid, pg. 407. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[20] Ibid, pp. 40 and 409. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[21] Note No. 374-S-CSJM of 27 August 2004 transmitted by the Secretary-General of the Supreme Council of Military Justice to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

E. The automatic penalty of at least one year of solitary confinement from the date of trial for anyone convicted of a terrorism offence

55. According to article 20 of Decree Law No. 25475, those convicted of the offence of terrorism must serve their sentence "continuously in isolation for the first year of their detention". The article added that "in no event (…) may those convicted share their single cells, a disciplinary rule which must remain in force until they are released". A similar provision was included in article 3 of Decree Law No. 25744.

56. These rules, of concern to the Committee against Torture which refers to the measure as "solitary confinement", also elicited a response from the Constitutional Court of Peru. Arguing on the basis of the need to recognize the dignity of the human person and the limits of the State's *ius puniendi*, the Court has expressed the view that a penalty may be considered inhuman or degrading depending on how it is applied. Inhuman treatment "may take the form of an unjustifiably long period of isolation and solitary confinement for the offender (…). The purpose of such a measure can only be to humiliate the prisoner and to break his physical and moral resistance, which from any standpoint must be considered unconstitutional" (para. 221).

57. Taking this reasoning further, the Constitutional Court has found "that submitting an offender to a penalty involving total isolation for the period of one year constitutes an unreasonable and disproportionate measure amounting to cruel and inhuman treatment. The same applies to the requirement that prisoners should be held in single cells for the whole period of their confinement in prison. In other words, the aforesaid rules, insofar as they stipulate these measures, constitute a breach of article 2.1 of the Constitution and article 5, subparagraph s 1, 2 and 6 of the American Convention on Human Rights insofar as they affect the right to personal liberty" (para. 223).

58. In other words, the Constitutional Court finds no legal justification for the measure, which also met with the objections of the Committee against Torture regarding solitary confinement for the period of one year and the ban on sharing single cells during the period of detention. Although the Court did not expressly mention the Convention against Torture, it did refer to the constitutional rules and to the American Convention, the content of which is similar to articles 11 and 16 of the Convention against Torture.

59. Lastly, the Constitutional Court declared unconstitutional the wording "in continuous solitary confinement for the first year of their detention and subsequently", and "in no event, on the responsibility of the prison director, may convicted prisoners share single cells, a disciplinary rule which must remain in force until they are released". This was replaced by article 20 of Decree Law No. 25475, which was drafted as follows:

> "The custodial penalties established in this Decree Law must be served in a maximum security detention centre, with compulsory work for the whole period of detention.
>
> Those convicted of a terrorism offence are entitled to receive a weekly visit strictly reserved for their closest relatives. The Justice Sector shall regulate the system of visits by means of a ministerial decision" (para. 224).

F. The apparent lack of effective investigation and prosecution of those who are accused of having committed acts of torture

60. This type of situation was common in the period from 1980 to 2000. The Truth and Reconciliation Committee (TRC), in general terms regarding the effective administration of justice, concluded that:

> "… the abdication of democratic authority affected the actual working of the administration of justice. The judicial system did not properly fulfil its mission, whether by legally condemning the actions of subversive groups, or by defending the rights of detained persons, or by putting a stop to the impunity allowed to State agents who were committing serious human rights violations. In the first case, the judiciary gained the reputation of being an inefficient filter that released the guilty and condemned the innocent; in the second case, its officials failed to fulfil their duty of protecting the rights of detainees, thus assisting the perpetration of serious violations of the rights to life and to physical integrity; and lastly, they failed to bring to justice members of the Armed Forces accused of serious offences, by systematically referring every case of contested jurisdiction to the military courts, where impunity was the rule."[22]

61. In the subchapter concerning torture, the TRC concluded that:

> "The Public Prosecutor's Office failed in practice to defend the law and the rights of detained citizens. In many cases, it validated practices that violated human rights such as statements extracted under illegal coercion. As regards the judicial and personal power of magistrates, these abdicated their duty to investigate and to penalize those responsible for acts of torture, thus leaving victims totally unprotected. On no occasion during criminal trials did they take account of allegations of torture and even less take the necessary steps to initiate *ex officio* the investigations which might have led to the identification of the offenders."[23]

62. The situation is now qualitatively different from that which prevailed until November 2000. Acts of torture which occurred at that time are now subject to criminal investigation or to judicial proceedings. The following are some of the cases concerned:

1. Fabián Salazar Olivares case

63. During the period when President Alberto Fujimori Fujimori was in office, several persons were filmed by Vladimiro Montesinos Torres, the de facto chief of the National Intelligence Service (SIN), on SIN premises, receiving money in exchange for compromising their positions in government service. Some of the videos containing these scenes were removed from the SIN and handed over to Fabián Salazar Olivares. In order to discover the source that leaked the information, with the knowledge of Alberto Fujimori Fujimori and on the orders of Vladimiro Montesinos Torres, on 24 May 2000 intelligence agents broke into the office of Salazar Olivares,

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[22] Final Report of the TRC. General conclusions of the report, Conclusion 123. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[23] Ibid, Tome VI, Chapter 1, subchapter on "Torture and other cruel, inhuman or degrading treatment", Conclusion 9, pg. 260. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

removed the video material and submitted Fabián Salazar Olivares to acts of torture in order to make him talk. Thanks to the intervention of third persons, they failed in their objective.

64. By order dated 28 December 2003, charges were brought in ordinary proceedings against Alberto Fujimori Fujimori for the offence of torture established and penalized in article 321 of the Criminal Code perpetrated against the journalist Fabián Salazar Olivares and humanity. The personal precautionary measure ordered against Alberto Fujimori Fujimori is one of detention. The case reference is No. 040-2003.A.V., under the responsibility of the investigating magistrate, Dr. Hugo Molina Ordóñez, of the Special Criminal Division of the Supreme Court of Justice, and Secretary Guevara Caicedo. The investigation period ended on 10 July 2004 and the case has been referred with reports to the Special Criminal Division of the Supreme Court of Justice of the Republic.

2. Case of the *National Intelligence Service cellars*

65. During the decade when Alberto Fujimori Fujimori was in office, a number of citizens were arrested by Army Intelligence agents on suspicion in some cases of being connected to terrorist groups. These persons were taken to premises of the Army Intelligence Service (SIE) and their present whereabouts are unknown. Other persons who were held in the SIE's jails included Susana Higushi Miyagawa, former spouse of Alberto Fujimori Fujimori, Samuel Dyer Ampudia, businessman, Gustavo Gorriti Ellenbogen, journalist, Hans Ibarra Portilla and Leonor La Rosa Bustamante, who were imprisoned and subjected to physical and psychological ill-treatment causing them injuries. These criminal acts were known to and authorized by Alberto Fujimori.

66. By order of 5 January 2004, charges were brought in ordinary proceedings against Alberto Fujimori Fujimori for the offences of aggravated homicide (assassination) and forced disappearance perpetrated against persons listed in the SIE's records; for the offence of serious injuries inflicted on Leonor La Rosa Bustamante and Susana Higushi Miyagawa; and for the offence of abduction perpetrated against Samuel Dyer Ampudia, Gustavo Gorriti Ellenbogen, Hans Ibarra Portilla, Leonor La Rosa Bustamante and Susana Higushi Miyagawa. A personal precautionary measure of detention was ordered against Alberto Fujimori. The case reference is No. 045-2003.A.V., under the responsibility of the investigating magistrate, Dr. Hugo Molina Ordóñez, of the Special Criminal Division of the Supreme Court of Justice, and Secretary Alván De la Cruz. The investigation period was extended by 60 days on 31 May 2004.[24]

3. Case of *Luis Ramírez Hinostroza*

67. Luis Alberto Ramírez Hinostroza was arrested on 22 February 1991 by members of the Peruvian Armed Forces and alleges that he suffered physical and psychological torture. His temporary disappearance occurred in the town of Huancayo, Department of Junín, when the plaintiff was taken to the "9 December" army barracks in that town and remained there for a period of 15 days without being informed of the reason for his detention and without the events being brought to the knowledge of his family.

68. The 4th Provincial Criminal Prosecutor's Office of Huancayo brought criminal charges before the 4th Criminal Court of Huancayo, which on 10 March 2004 initiated proceedings

[24] Note No. 50-04-/PROCURADURÍA-JUS of 26 July 2004 transmitted by the Deputy Ad Hoc Public Procurator to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

against retired Army General Luis Pérez Document for the offences of abduction and causing bodily harm. The General was Chief of the Military Political Command of Huancayo at the time the arrest of Luis A. Ramírez Hinostroza occurred. As a result of the participation of Luis Ramírez Hinostroza in the investigations, both he and his family received death threats.

69. On account of the said death threats, on 15 March 2004 Luis Ramírez Hinostroza applied for personal protection and on 19 March 2004 the Prefecture of Huancayo transmitted Note No. 094_2004_1508_JUNI to the command of VII DIRTEPOL_PNP, requesting appropriate investigations. On 22 March 2004 the 4th Criminal Court of Huancayo in Note No. 5532_2004_CIPH_ETG_SEC ordered personal protection against Luis Pérez Documet. Lastly, on the basis of that document, Prefectural Decision No. 025_2004_GAR_1508/P_JUNI was issued ordering personal protection to be provided for the applicant and his family. Despite the assurance of protection, however, in mid-August 2004 Mr. Luis Ramírez Hinostroza was attacked and suffered gunshot wounds. Thereupon the 4th Criminal Court of Huancayo in Note No. 6888_2004_4JPHYO_LAZ again ordered the Prefecture to offer personal protection to Luis Ramírez Hinostroza, as had been authorized by the Prefect earlier.

70. In an unnumbered note dated 2 August 2004, the Inter-American Commission on Human Rights applied to the Peruvian Government for a protective measure in favour of Luis Alberto Ramírez Hinostroza. In the note, the Commission requested the Peruvian Government to take the necessary steps to protect the life and physical integrity of Luis Alberto Ramírez Hinostroza and his family, to agree on arrangements with the beneficiaries and applicants and to provide information concerning the measures adopted in order to clarify judicially the events that justified the adoption of protective measures.

71. In memorandum No. 275-2004-DGPNP-CEOPOL dated 31 August 2004, PNP General Percy Soria Medina, Director-General of the Peruvian National Police (PNP), wrote to PNP General Adolfo Alfaro Zúñiga, Director of VIII-DITERPOL-HUANCAYO, as follows:

a) The PNP General Director of VIII-DITERPOL-HUANCAYO shall immediately proceed to make arrangements for ensuring the personal protection of the victim, with two police units, for 24 hours a day until further notice;

b) He shall arrange for specialized staff of the JEFICAJ (Office of Criminal Investigation and Support for Justice) to undertake the necessary investigations for the purpose of identifying, locating and capturing the suspected perpetrators in coordination with the representative of the Public Prosecutor's Office;

c) He shall provide daily information in writing regarding the victim's state of health, the state of the investigations and the application of the personal protection service.

4. Prosecution investigations into the offence of torture

a) Torture of Fabián Salazar Olivares

72. This is Complaint No. 11-2003, brought before the Criminal Public Prosecutor's Office specialized in human rights under the responsibility of Dr. Héctor Huamán Villar, on the basis of the complaint by the *National Human Rights Coordinator against Vladimiro Montesinos Torres and others*. These investigations are currently being dealt with by the Anti-Corruption Police Directorate.

b) Torture and disappearances in the Army Intelligence Service (SIE)

73. These facts are contained in Complaint No. 001-2002, brought before the Criminal Public Prosecutor's Office specialized in human rights under the responsibility of Dr. Héctor Huamán Villar. The complaint was lodged by the Investigating Committee of the Congress of the Republic regarding the use, origin, movement and destination of the financial resources of Vladimiro Montesinos Torres and the clear connection with former President Alberto Fujimori Fujimori. The complaint is brought against Vladimiro Montesinos Torres and those responsible. The police investigation is complete and proceedings are currently in course before the above-mentioned Public Prosecutor's Office for a decision.

c) Torture of Leonor La Rosa Bustamante

74. The facts are contained in Complaint No. 010-2003, brought before the Criminal Public Prosecutor's Office specialized in human rights under the responsibility of Dr. Héctor Huamán Villar. The complaint was lodged by the National Human Rights Coordinator. Those charged are Carlos Sánchez Noriega and others. The complaint is at present with the Public Prosecutor's Office.[25]

75. On a national level, the perpetrators of acts of torture are being prosecuted, subject to the rules of due process. This type of trial is conducted in ordinary proceedings, according to stages of investigation followed by hearings. The way remains open for any victims to lodge complaints and claim their rights in due course in order to ensure that the offence does not remain unpunished.[26]

76. With the introduction of the new Code of Penal Procedure, by Legislative Decree No. 957 (annex 10) published on 29 July 2004, the intention is to establish a secure accusatory system whereby the Public Prosecutor's Office is responsible for the conduct of criminal affairs, for prosecuting offences, for directing investigations, for assuming the burden of proof, for bringing charges and for participating in oral proceedings. This has the advantage of separating the functions of prosecutors from those of judges, while allowing the former to play a more active part.

G. The use of, in particular, the amnesty laws which preclude prosecution of alleged torturers who must, according to articles 4, 5 and 12 of the Convention, be investigated and prosecuted where appropriate

77. With regard to the amnesty laws, the TRC concluded that:

> "The dictatorship of Alberto Fujimori attempted spuriously to legalize impunity for human rights violations by State agents by managing to have the Democratic Constitutional Congress provide majority approval for two amnesty laws that violated constitutional provisions and international agreements ratified under Peru's sovereign power. With one

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[25] Note No. 560-04-/PROCURADURÍA-JUS of 26 July 2004 transmitted by the Deputy Ad Hoc Public Procurator to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[26] Note No. 118-2004-DDHH/PJ of 31 August 2004 transmitted by the representative of the judiciary before the National Human Rights Council to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

honourable exception, in which a law was not applied on the grounds that it breached constitutional provisions and international agreements, judges renounced their authority to serve as a decentralized line of defence against unconstitutional legislation".[27]

78. The TRC therefore recommended:

"… that the State powers should resort to amnesties, pardons and other presidential mercies not at their own discretion but within the strict framework established by the Inter-American Court of Human Rights. The TRC was and is opposed to any type of legal pardon by means of which the search for the truth and the satisfaction of justice are subordinated to the reasons of State. Reconciliation, as we understand it and present it in this report, presupposes the exclusion of external intervention in what must be a strictly juridical task".[28]

79. In this respect, the Inter-American Court of Human Rights unanimously decided that self-amnesty laws are incompatible with the American Convention of Human Rights and "lack legal effect and may not continue to obstruct the investigation on the grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated". In other words, the above-mentioned decision of the Inter-American Court was not limited only to the *Barrios Altos* case; rather the lack of legal effects of amnesty laws extends to all suspected violations of human rights where an attempt has been made to apply such laws. Its implementation is basically the responsibility of the Public Prosecutor's Office and the courts.[29]

80. The military courts did not apply amnesty laws that were intended to exclude the possibility of bringing suspected torturers to trial. Rather, the Inter-American Court of Human Rights passed judgement on 14 March 2001 in the *Barrios Altos* case and declared that amnesty Laws No. 26479 and No. 26492 are incompatible with the American Convention on Human Rights and consequently lack legal effect.[30]

81. As far as the action of the Ad Hoc State Procurator's Office in the *Fujimori-Montesinos* cases is concerned, the amnesty issue has not been discussed in the current criminal proceedings and or in the investigations involving the Ad Hoc Procurator's Office, since the matter has not been raised by those accused or under investigation.

82. For the Ad Hoc State Procurator's Office, while the amnesty laws which gave rise to the concern of the Committee against Torture sought to establish impunity, they lack legal effect and

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[27] TRC final report, General conclusions of the report, Conclusion 129. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[28] Ibid. Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter 2, recommendation f), pg. 107.

[29] Note No. 118-2004-DDHH/PJ of 31 August 2004 transmitted by the representative of the judiciary before the National Human Rights Council to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[30] Note No. 374-S-CSJM of 27 August 2004 transmitted by the Secretary-General of the Supreme Court of Military Justice to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

are in open opposition to the State's international obligations. The five grounds on which its position is based are as follows:

a) *Firstly.* Self-amnesty laws are prohibited by international human rights instruments.

b) *Secondly.* Notwithstanding the fact that amnesties are prohibited in cases of human rights violations, on 16 June 1995 the Government of Alberto Fujimori Fujimori promulgated Act No. 26479 with the clear intention of establishing impunity. As some magistrates refused to apply the amnesty law in cases of human rights violations which they were investigating, on 2 July 1995 the Government promulgated Act No. 26492 stipulating that amnesty was not open to review by the courts and had to be applied by the magistrates. It is now known that this amnesty was even promised beforehand to members of the Colina Group in order to persuade some of them to appear before the military courts in the *La Cantuta* case.

c) *Thirdly.* The promulgation of the amnesty laws met with an immediate international reaction. Three Special Rapporteurs and the Chairman of the Working Group on Enforced or Involuntary Disappearances sent a joint communication to the Government of Peru pointing out that such laws denied effective remedies to whoever had fallen victim to human rights violations and were contrary to the spirit of human rights instruments, including the Vienna Declaration. The Human Rights Committee, the Inter-American Commission on Human Rights and non-governmental organizations all rejected the laws. In particular, the Inter-American Commission on several occasions recommended repealing the amnesty law and related legislation.

d) *Fourthly.* On 14 March 2001, the Inter-American Court of Human Rights condemned the Peruvian State for promulgating the amnesty laws; it declared that they had no legal effect and ordered the State to investigate and punish those responsible for human rights violations. More specifically, the Court considered that:

"all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law".

e) *Fifthly.* The amnesty laws are contrary to the international obligation of the State, insofar as they release criminals who committed offences against human rights from criminal liability. Crimes against humanity cannot be subject to any amnesty whatever; they are imprescriptible and subject to universal jurisdiction. Magistrates must ensure the true fulfilment of the international obligations undertaken by the Peruvian State. They are, in fact, the ultimate guarantors that the obligations will be fulfilled. Magistrates are called upon to administer justice within the scope of their powers; this means punishing those responsible for committing offences and supervising the enforcement of the penalty. In the exercise of their functions, they are subject to the law, the Constitution and international treaties.[31]

[31] Note No. 560-04-/PROCURADURÍA-JUS of 26 July 2004 transmitted by the Assistant Ad Hoc State Procurator to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

H. The maintenance in some parts of the country of emergency laws which abrogate ordinary human rights protection

83. There is no doubt that owing to the state of violence prevailing in the country the tendency to institute a state of exception, which is a constitutional power held by the President of the Republic, in the period between 1980 and 2000 in most cases perverted this extraordinary device for dealing with disturbances of the public order in a most serious and blatant manner.

84. With regard to states of emergency, the Truth and Reconciliation Committee (TRC) concluded that:

> "… Act No. 24150 placed soldiers and police in provinces declared to be in a state of emergency under military jurisdiction, which favoured the impunity of State agents responsible for human rights violations. Similarly, the permanent nature of states of emergency in more and more provinces weakened democracy and created a climate ripe for human rights violations, as well as a general sense among the population and the civilian authorities in those areas that power resided in the military authority."[32]

85. In another paragraph of the final report, the TRC expressed the view that "… the state of emergency under military control produced a situation of defencelessness among the population, which was deprived during the years and in the places of worse violence of a fundamental instrument of protection".[33]

86. Furthermore, with regard to violations committed during states of emergency, the TRC expressed the following opinion:

> "The TRC concludes that, in this framework, the political-military commands (CPM), designated the highest state authority in the emergency zones, may be said to bear the primary responsibility for these crimes. The judiciary must establish the exact degree of criminal responsibility of CPM commanders, whether for ordering, inciting, facilitating or covering up the crimes, or for having neglected the fundamental duty to put a stop to them."[34]

87. In view of the above, the TRC recommended regulating states of exception:

> "There is a need to establish clearly the scope and limits of the action of the Armed Forces during states of exception, within the Constitution and the law. An immediate measure consists in derogating Act No. 24150, amended by Legislative Decree No. 749, which assigns control of internal order to the Armed Forces. It must be clear that states of exception do not entail suspension of the Constitution or the subordination of political

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[32] Final report of the TRC, General conclusions of the report, Conclusion 75. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[33] Ibid. Tome VI, Chapter 1, subchapter on "Violation of due process", pg. 466. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[34] Ibid. General conclusions of the report, Conclusion 56. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

authorities; and that the duty of the Armed Forces in states of exception is to support the civilian political authorities and not to replace them."[35]

88. In response to situations of extreme seriousness and institutional crisis which society undergoes at certain times and in certain places, that is, in a context that implies having to face facts and events that jeopardize the normal functioning of the public authorities and/or threaten the continuity of State institutions, the Political Constitution of 1993 enables the President of the Republic to decree states of exception as an extraordinary measure. According to article 137 of the Constitution:

"The President of the Republic, in agreement with the Council of Ministers, may decree for a determined period, throughout the national territory or in part of that territory, and subject to notifying the Congress or the Permanent Commission, the states of exception referred to in this article:

1. *State of emergency, in the event of a breach of the peace or internal order, a catastrophe or grave circumstances that disturb the life of the Nation.* In this event, the exercise of constitutional rights with respect to liberty and personal security, the inviolability of domicile, freedom of association and freedom of movement in the territory, set forth in article 2, clauses 9, 11, 12 and 24f, may be restricted or suspended. In no circumstances may any person be banished or exiled.

(…)

2. *State of siege, in the event of invasion, external war, civil war, or the imminent occurrence of any of these, with mention of fundamental rights the exercise of which may not be restricted or suspended.* (…)"

89. According to the view expressed by the Constitutional Court in considering 18 of the judgement of 16 March 2004 contained in Order No. 0017-2003-AI/TC (annex 11), the characteristics of a state of exception are: concentration of power in the hands of a single person, existence or imminent risk of a serious state of abnormality, impossibility of resolving abnormal situations through the use of ordinary legal procedures, transitoriness, geographical focus on the place where such situations occur, and provisional restriction of certain constitutional rights, proportionality and reasonableness of applicable measures, judicial supervision of those measures and the goal of defending the durability and functioning of the political/legal system.

90. In other words, the action taken when a state of exception was declared, in the form of a state of emergency, actually led to a further deterioration in the institutional legal framework, in which normally State officials responsible for applying the law exercise civil authority and implement internal security policy. This judgement by the Constitutional Court has made clear the proper constitutional framework within which these extraordinary powers allowed by the Constitution to the Executive Power must be exercised.

91. Another sign of change in the situation that gave rise to the Committee's concern is the significant decline in the periods and places declared to be subject to the state of emergency,

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[35] Ibid. Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter 2, Institutional Reforms, pg. 122.

which has followed the marked decline in subversive activities. On several occasions in recent years, the measure was imposed on account of other types of social unrest, which required firm action on the part of the Government to restore public order under the democratic and constitutional authority of the security forces.

92. It is therefore clear that, since 1999, the establishment of states of exception in various geographical areas of the country has diminished. This shows that the practice of suspending the exercise of certain fundamental rights has not been continued by the President of the Republic.

93. A list is given below of Supreme Decrees issued between 1999 and 2004, by which states of exception were decreed in various areas of the country.

1. Decrees passed by the Ministry of Defence

94. The Decrees passed in 1999 were as follows:

- Supreme Decree No. 002-DE-CCFFAA: extended the state of emergency in various provinces and districts of the departments of Huánuco, San Martín and Loreto;

- Supreme Decree No. 003-DE-CCFFAA: extended the state of emergency in various provinces and districts of the departments of Huánuco, San Martín, Loreto, Pasco, Junín, Huancavelica, Ayacucho, Cusco and Apurímac;

- Supreme Decree No. 004-DE-CCFFAA: extended the state of emergency in a province of the department of Apurímac;

- Supreme Decree No. 008-DE-CCFFAA: extended the state of emergency in various districts of the province of Lima;

- Supreme Decree No. 009-DE-CCFFAA: extended the state of emergency in the provinces of Coronel Portillo, Padre Abad and Puerto Inca of the departments of Ucayali and Huánuco;

- Supreme Decree No. 018-DE-CCFFAA: extended the state of emergency in various districts and provinces of the departments of Huánuco, San Martín and Loreto;

- Supreme Decree No. 019-DE-CCFFAA: extended the state of emergency in various districts and provinces of the departments of Pasco, Junín, Huancavelica, Ayacucho and Cusco;

- Supreme Decree No. 020-DE-CCFFAA: extended the state of emergency in a province of the department of Apurímac;

- Supreme Decree No. 025-DE-CCFFAA: extended the state of emergency in the districts of Ate, San Juan de Lurigancho, San Juan de Miraflores, San Luis, San Martín de Porres, Los Olivos, Villa El Salvador and Villa María del Triunfo;

- Supreme Decree No. 029-DE-CCFFAA: extended the state of emergency in various provinces of the departments of Ucayali and Huánuco;

- Supreme Decree No. 033-DE-CCFFAA: extended the state of emergency in provinces of the department of Apurímac;

- Supreme Decree No. 034-DE-CCFFAA: extended the state of emergency in various provinces of the departments of Junín, Huancavelica, Ayacucho and Cusco;

- Supreme Decree No. 035-DE-CCFFAA: extended the state of emergency in various provinces of the departments of Huánuco, Loreto and San Martín;

- Supreme Decree No. 036-DE-CCFFAA: extended the state of emergency in the provinces of Coronel Portillo and Padre Abad of the department of Ucayali;

- Supreme Decree No. 037-DE-CCFFAA: extended the state of emergency to various provinces and districts of the departments of Junín, Huancavelica, Ayacucho and Cusco;

- Supreme Decree No. 038-A-DE-CCFFAA: extended the state of emergency in the province of Padre Abad, department of Ucayali;

- Supreme Decree No. 038-DE-CCFFAA: extended the state of emergency in various provinces and districts of the departments of San Martín and Huánuco;

- Supreme Decree No. 044-DE-CCFFAA: extended the state of emergency in various provinces of the departments of Huánuco and San Martín;

- Supreme Decree No. 045-DE-CCFFAA: extended the state of emergency in various provinces of the departments of Junín and Ayacucho and in districts of the province of La Convención, department of Cusco;

- Supreme Decree No. 048-DE-CCFFAA: extended the state of emergency in the province of Padre Abad, department of Ucayali;

- Supreme Decree No. 060-DE-SG: extended the state of emergency in various provinces of the departments of Junín, Ayacucho, Cusco, Huánuco and San Martín;

- Supreme Decree No. 061-DE-SG: extended the state of emergency in various provinces of the departments of Junín, Ayacucho, Cusco, Huánuco and San Martín.

95. The Decrees issued in 2000 were as follows:

- Supreme Decree No. 001-DE- CCFFAA: extended the state of emergency in various provinces of the departments of Huánuco and San Martín.

- Supreme Decree No. 002-DE-CCFFAA: extended the state of emergency in various provinces of the departments of Ayacucho, Junín and Cusco.

2. Decrees issued by the Office of the President of the Council of Ministers

96. The Decrees issued in 2000 were as follows:

- Supreme Decree No. 015-2000-PCM: declared a state of emergency in the district of Iñapari, province of Tahuamanú;

- Supreme Decree No. 022-2000-PCM: extended the state of emergency in the district of Iñapari, province of Tahuamanú;

97. The Decrees issued in 2002 were as follows:

- Supreme Decree No. 052-2002-PCM: declared a state of emergency in the department of Arequipa;

- Supreme Decree No. 054-2002-PCM: invalidated the decree declaring a state of emergency in the department of Arequipa.

98. The Decrees issued in 2003 were as follows:

- Supreme Decree No. 055-2003-PCM: declared a state of emergency throughout the national territory;

- Supreme Decree No. 062-2003-PCM: terminated the state of emergency declared under Supreme Decree No. 055-2003-PCM, except in the departments of Junín, Ayacucho and Apurímac, and in the province of La Convención, department of Cusco;

- Supreme Decree No. 070-2003-PCM: extended the state of emergency in the departments of Junín, Ayacucho and Apurímac and in the province of La Convención, department of Cusco, and declared a state of emergency in the province of Tayacaja, department of Huancavelica;

- Supreme Decree No. 077-2003-PCM: declared a state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín;

- Supreme Decree No. 083-2003-PCM: extended the state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín;

- Supreme Decree No. 093-2003-PCM: declared a state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín.

99. The Decrees issued in 2004 were as follows:

- Supreme Decree No. 025-2004-PCM: extended the state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín;

- Supreme Decree No. 039-2004-PCM: extended the state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín;

- Supreme Decree No. 056-2004-PCM: extended the state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín;

- Supreme Decree No. 067-2004-PCM: extended the state of emergency in various provinces and districts of the departments of Apurímac, Ayacucho, Huancavelica, Cusco and Junín;

- Supreme Decree No. 071-2004-PCM: declared a state of emergency in the district of San Gabán, province of Carabaya and in the district of Antauta, province of Melgar, department of Puno;

- Supreme Decree No. 072-2004-PCM: extended the scope of the provisions of Supreme Decree No. 071-2004-PCM to the districts of Ollachea and Ayapara, province of Carabaya, department of Puno.

100. The State reiterates that the crucial difference with the states of emergency declared prior to 2001 is that now, in accordance with democratic control of states of exception, the civilian authorities are left in charge of supervising the security forces, as it should be under the rule of law. In this respect, the Constitutional Court's decision of 16 March 2004, which found the so-called political-military commands governed by Act No. 24150 unconstitutional, took a most important step forward towards strengthening democratic institutions and significantly diminished the chances that human rights violations may be committed whenever and wherever the exercise of certain fundamental rights is restricted, in accordance with the Constitution and what is permitted for the "hard core of human rights" referred to in article 4 of the International Covenant on Civil and Political Rights and article 27 of the American Convention on Human rights, rules which under no circumstances suspend the right to personal integrity.

I. The special prison regime applicable to convicted terrorists and in particular to convicted terrorist leaders

101. With regard to the prison regime applicable to persons convicted of the offence of terrorism, where practices, according to the norms established by various human rights organizations, constitute cruel, inhuman or degrading treatment, the final report of the Truth and Reconciliation Commission (TRC) contains a subchapter on prison conditions, in which the TRC concluded that:

> "The Peruvian prison system suffers from serious structural and normative defects which have survived the few efforts made to reform it. In the circumstances, maintaining that the object of the penalty is to re-socialize prisoners amounts to no more than a mere statement of intent enshrined in the Constitution and in the relevant international instruments. The treatment of prisoners interned as a consequence of the type of violence referred to in this

report has oscillated between permissiveness and neglect, on the one hand, and draconian control and cruel treatment on the other."[36]

102. The TRC also referred to solitary confinement – lasting 23 and a half hours – to which those convicted of terrorism were submitted, expressing the view that such a measure constituted cruel treatment: "The whole system rested on the practice of solitary confinement (article 20, Decree Law No. 25475). Confinement for 23 and a half hours of the day in a reduced physical space (on average 2 × 3 metres) constituted a particularly cruel form of treatment for prisoners."[37]

103. Concerning health and food conditions, the TRC commented that:

"Nutrition, as has already been pointed out, was deficient throughout the prison system. In addition, however, in the case of those convicted of terrorism and treason the supply of food was subject to a number of additional inhuman practices, which were illegally applied by some prison authorities.[38]

With regard to the health service, the same initial comment applies as for food. Deficiencies in the health service are part of the structural problems of the Peruvian prison system. Nevertheless, the solitary confinement factor aggravated the health conditions of prisoners."[39]

104. The TRC also commented that: "In the implementation of the prison system, recurring practices of cruel treatment occurred which took advantage of the defencelessness of prisoners brought about by incarceration and isolation."[40]

105. It is clear that following the Constitutional Court's judgement of 3 January 2003 the Peruvian legal system is being realigned with the constitutional provisions of article 139, paragraph 22, of the Constitution and article 5.6 of the American Convention on Human Rights, which stipulates that the essential aim of the penitentiary system is "the reform and social readaptation of the prisoners", and also with article 10.3 of the International Covenant on Civil and Political Rights, which states that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation" (para. 179). This principle, which should apply to the prison system according to the Constitution, is directed "at all public authorities engaged in the enforcement of penalties and especially legislators (…)" (para. 180). Within this normative and conceptual framework, the Constitutional Court declared the penalty of life imprisonment unconstitutional, since it has no time limit and breaches the principle of proportionality, which does not allow incarceration for life (para. 189). The Court added further on that life imprisonment "is unconstitutional only in the event that no time-related mechanisms of release are provided, through prison benefits or others aimed at ensuring that the penalty is not of indefinite duration. If within a reasonable time, therefore, the legislator does not pass a law as suggested, the effect of the sentence will be that not later than

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[36] Ibid. Tome VI, Chapter 1, subchapter on "Violation of due process", pg. 460. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[37] Ibid, pg. 452. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[38] Ibid, pg. 454. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[39] Ibid, pp. 453-455. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[40] Ibid, p. 453. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

30 years after the start of imprisonment the courts will be obliged to review the sentences" (para. 194).

106. In the light of the Constitutional Court's decision, the Government promulgated Legislative Decree No. 921 of 17 January 2003 (annex 12), in article 4 of which it established the legal sentence of life imprisonment, incorporating the appropriate procedure in Title II, chapter V, of the Code of Enforcement of Penalties.

107. The Constitutional Court decided that a problem arose from the lack of a maximum period of sentence, once Legislative Decree No. 895 had been declared unconstitutional. The Final Fifth Provision of that decree amended article 29 of the Penal Code, which established that temporal custodial sentences extended from two days to not more than 35 years (para. 204). The Court urged the Legislature, within a reasonable lapse of time, to establish maximum prison sentences for each of the typical cases of terrorism provided for in Decree Law No. 25475 (para. 205). As a result, Legislative Decree No. 921, in article 2, has established maximum periods of imprisonment for terrorist offences (annex 12).

108. These judicial and legislative measures have been supplemented with another two measures, the first being the Regulation governing the Code of Enforcement of Penalties, which came into effect under Supreme Decree No. 015-2003 of 11 September 2003 (annex 13) and which regulates the lifestyle and treatment of prison inmates; the second measure was the decision to annul all sentences handed down by military courts on civilians and those decided by "faceless courts" of the judiciary. As a result, persons convicted of terrorism as leaders of subversive organizations have or had the opportunity to have their trials reviewed, with guarantees of due process. This means to say that they are subject to a prison regime which complies with the standards of humanity and dignity of a democratic State governed by the rule of law and by the minimum protection standards recognized by international human rights law and international humanitarian law, which may never be suspended or restricted as far as the protection of personal integrity and the prohibition of torture or cruel, inhuman or degrading treatment are concerned.

J. The failure of the Attorney General's Office to keep a precise register of persons who claim that they have been tortured

109. Peru has no official figures regarding the number of cases of torture reported to the relevant authorities. This is because neither the Public Prosecutor's Office nor any of the judicial bodies keeps a special record of complaints of this kind. In this respect, while the Prosecutors' Offices of the judicial district of Lima do have the SIATF (information system of support for prosecution work), this database has not yet been extended to the Prosecutors' Offices in the interior, where complaints continue to be manually recorded in the Single Registry of Criminal Complaints (RUDEP), which makes it difficult to build them into a system.

110. A further problem is the unsuitable description of treatment given by some victims or their lawyers who, out of ignorance, often report a breach of personal integrity as injuries or abuse of authority, without realising that such treatment may constitute torture according to article 321 of the Penal Code. The problem is even more serious when such treatment is improperly described precisely by those responsible for initiating judicial proceedings, either *ex officio* or on request, in

defence of legality and of public interests governed by law, and for implementing the appropriate penal action. This is true of some representatives of the Public Prosecutor's Office.[41]

II. RECOMMENDATIONS OF THE COMMITTEE

111. After examining the third periodic report of Peru (CAT/C/39/Add.1), the Committee against Torture, in its conclusions (A/55/44, paras. 60 to 63), reiterated the recommendations it had made at the end of its consideration of the second periodic report of Peru (CAT/20/Add.6) and put forward several new recommendations.

A. Reiterated recommendations

1. Expedite reforms designed to establish a State genuinely founded upon the rule of law

112. After November 2000, when the constitutional President, Dr. Valentín Paniagua, took charge of the Government of Democratic Transition, the Congress of the Republic, the Executive Power and the autonomous constitutional institutions recovered their powers and began to exercise them independently in accordance with the law, in a process of re-institutionalization which is still continuing. In this regard, one of the central aims of the human rights policies undertaken by the present Government of President Alejandro Toledo Manrique is to achieve readmission within the democratic community of nations, subject to strict fulfilment of the international obligations freely and sovereignty contracted by the Peruvian State. Of course such reforms involve the whole machinery of State and require time, resources and qualified personnel, all of which are gradually coming together. For instance, the final report of the Truth and Reconciliation Commission (TRC) contained several recommendations aimed, amongst others, at establishing a genuine rule of law.

113. In this respect, the TRC recommended that, generally speaking:

> "An express commitment not to use violence and to respect human rights should be undertaken both by the political parties and by social organizations, as a prerequisite for joining and acting within the system of legally recognized parties and social organizations, alongside a firm commitment in the statutes of political and social organizations to abide by the Constitution as the fundamental rule of political life and democratic pluralism".[42]

114. The TRC's recommendations concentrate on the following issues:

a) Institutional reforms required to establish a genuine rule of law and to prevent violence;

b) Full compensation for victims;

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[41] Note No. DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Assistant Ombudsman for Human Rights and Disabled Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[42] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter 2, Institutional Reforms, pg. 113. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

c) National plan of burial sites:

d) Follow-up mechanisms for its recommendations.

2. Repeal laws which may undermine the independence of the judiciary

115. The initial recommendation was worded as follows:

> "The State party should consider repealing laws which may undermine the independence of the judiciary, and take account of the fact that, in this area, the competent authority with regard to the selection and career of judges should be independent of the Government and the administration. To guarantee such independence, measures should be taken to ensure, for example, that the members of that authority are appointed by the judiciary and that the authority itself decides on its rules of procedure." (A/55/44, para. 60).

116. The response to this recommendation has already been given in the comments given regarding the Committee's concerns. To sum up, it may be explained that since the Democratic Transition was introduced in November 2000, the Peruvian State as a whole has been following a human rights policy that complies with constitutional norms and the international obligations contained in the human rights treaties to which Peru is a party. The constitutional mechanism provided and currently operating is the action of the National Council of the Judiciary, which has been making a considerable effort to reduce the provisional aspect of the appointments of prosecutors and magistrates.

117. As with any human endeavour, the result is always subject to improvement and various State bodies, such as the aforementioned TRC, have also made specific recommendations in this respect. Among the recommendations put forward by the TRC with a view to reforming the administration of justice, in order to ensure that the system effectively defends human rights, was: "establishing a policy to strengthen the independence of the judiciary, including an independent system for the appointment, evaluation and sanction of magistrates and the reinstatement of the careers of judges and prosecutors subject to public, general criteria of decision-making.[43]

118. The selection and evaluation of magistrates is conducted independently of the Government and the Administration. The process is even subject to the constitutional supervision of the Constitutional Court and of the inter-American system of protection for human rights, which has received appeals from 104 former judges or prosecutors who consider that their right to due process has been breached by the National Council of the Judiciary. They have lodged 41 individual or collective complaints in this respect with the Inter-American Commission on Human Rights. The Government itself has set up a Multisectoral Committee which is now studying the possibility of a friendly settlement with the appellants.[44] This means that the Peruvian State recognizes that certain breaches of the fundamental rights of some citizens may have occurred and is seeking a settlement of the appeal through the conciliation mechanism provided in the American Convention on Human Rights. Peru has been showing a firm determination to establish a mechanism for the selection and evaluation of judges that offers

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[43] Ibid, pg. 127. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[44] Supreme Decision No. 207-2004-JUS of 2 September 2004 published on 3 September 2004.

security and trust and that is in line with the constitutional norms and international standards of due process.

3. Take measures to ensure that victims of torture receive compensation

119. The initial recommendation was worded as follows:

> "The State party should consider, pursuant to articles 6, 11, 12, 13 and 14 of the Convention, taking measures to ensure that victims of torture or other cruel, inhuman or degrading treatment, and their legal successors, receive redress, compensation and rehabilitation in all circumstances." (A/55/44, para. 60).

120. The TRC laid down the duty and right to compensate the victims of violence in the following terms:

> "According to international human rights law, the responsibility of the State arises when the latter fails to fulfil its primary obligation to respect and ensure respect for internally recognized human rights. This obligation includes the duty of safeguard, which refers to the legal duty to prevent human rights violations, to investigate thoroughly whatever violations have been committed within its jurisdiction in order to identify those responsible, to impose appropriate penalties and *the duty to provide compensation for victims*."[45]

121. Insofar as, according to the TRC, the Peruvian State has the duty to offer due compensation to all victims of violence, including torture victims, the TRC recommended a Comprehensive Plan for Reparations, the general objective of which is: "to repair and compensate the violation of human rights as well as social, moral and material losses or damage suffered by victims as a result of internal armed conflict."[46] This plan makes provision for various types of reparations, including forms of symbolic, health, educational, financial, collective and other compensation. The table given below[47] shows the reparations programmes intended for torture victims.

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[45] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter on Comprehensive Plan for Reparations, pg. 145. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[46] Ibid, pg. 147. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[47] Table taken from annex 6 to the final report of the Truth and Reconciliation Commission, pg. 70.

	Programmes	*Components*
Torture victims	Programme of symbolic reparations	• Public gestures • Acts of recognition • Mementos or memorials • Acts conducive to reconciliation
	Programme of health reparations (for victims suffering from some physical or mental problem)	• Full recovery, including clinical treatment
	Programme of educational reparations (for victims obliged to interrupt their studies on account of persecution)	• Access to and restoration of the right to education (exemption from fees; full fellowships with quotas for regions and types of professional career; adult education programmes) • Possibility of transmitting the right to a relative in the form of educational credits
	Programme to restore citizenship rights	• Juridical-legal advice And if appropriate: • Restoration of the legal status of victims • Cancellation of police, judicial and criminal records • Restoration of the legal status of undocumented victims • Exemption from fees
	Programme of economic reparations	• In the form of pensions (for victims who remain permanently affected by partial or total physical or mental disabilities) • In the form of services (registration with housing and employment programmes)
	Programme of collective reparations (for victims belonging to a beneficiary group)	

122. It should be mentioned that the notion of victim used by the TRC for the purposes of its Comprehensive Plan for Reparations includes torture victims:

> "Generally speaking, the TRC considers that victims include 'all persons or groups of persons who for the purposes of or on account of the internal armed conflict which the country underwent between May 1980 and November 2000 have been subjected to any acts or omissions that violate the rules of international human rights law, such as: enforced disappearance, abduction, extrajudicial execution, assassination, enforced displacement, arbitrary arrest and violation of due process, enforced recruitment, torture, rape, and wounds, injuries or death inflicted in the course of attacks that violate international humanitarian law."[48]

[48] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter on Comprehensive Plan for Reparations, pg. 149. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

123. In order to follow up the TRC's recommendations and to coordinate the implementation of public policies specifically aimed at the fulfilment of peace, reconciliation and collective reparation goals, the High Level Multisectoral Committee was set up with responsibility for monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation. Within one year of the issue of the TRC's final report, the High Level Committee found that a number of steps had been taken to achieve collective reparations, including the following: approval of the Framework Programme of State Action in the Area of Peace, Reparation and National Reconciliation; the Supreme Decree extending the benefits of comprehensive health insurance to the victims of internal conflict suffering from mental health problems; and the Ministerial Decision setting up a list of victims' organizations.[49]

124. The Multisectoral Committee also announced the implementation of some of the TRC's symbolic recommendations, including:

a) The formal apology made by the President of the Republic (on 23 November 2003), in the name of the nation as a whole, for the victims of terrorism, those who disappeared, the dead, the disabled, and for all the suffering caused by political violence in the period 1980-2000;

b) The establishment of a National Reconciliation Day to take place on 10 December.

B. New recommendations

1. Ensure vigorous investigation and the prosecution of all reported instances of alleged torture

125. The Committee's recommendation was worded as follows:

> "The State party should ensure vigorous investigation and, where appropriate, the prosecution of all reported instances of alleged torture and ill-treatment by its authorities, whether civil or military." (A/55/44, para. 61 a)).

126. In several parts of its final report, the TRC expressed the need to prosecute reported offences, including instances of torture. It considered in particular that:

> "… an essential component of the reparation process is justice. No path towards reconciliation will be open if there is not effective implementation of justice, both as regards reparation for the injury suffered by victims and as regards the just punishment of perpetrators and consequently the end of impunity. It is just not possible to build an ethically sound and politically viable country on a foundation of impunity. With the cases it files with the Public Prosecutor's Office, the identification of around 24,000 victims of the internal armed conflict and the findings of its investigations in general, the TRC has been trying substantially to reinforce its arguments in support of its appeal for justice for victims and their organizations, as well as for the bodies defending human rights and the public at large."[50]

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[49] Narrative account of activities implemented by the Committee (March-August 2004) drawn up by the High-Level Multisectoral Committee in charge of monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation, issued on 26 August 2004.

[50] Ibid. Final report of the TRC, General Conclusions of the report, Conclusion 168. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

127. Having arrived at that conclusion, the TRC recommended setting up a temporary specialized system for prosecuting cases of human rights crimes and violations: "It is recommended that by an Act of Congress a specialized system should be set up to prosecute cases brought by the Truth and Reconciliation Commission. The system should be designed to last four years; it should be provided with sufficient resources and the support of a special unit of the National Police to assist the work of specialized prosecutors.[51]

128. The TRC also urged the Public Prosecutor's Office "…as soon as possible (within 30 days) to initiate official investigations against those suspected of crimes investigated by the TRC".[52] At the same time, the TRC sent the Public Prosecutor 43 cases, eight of which were for breaches of the right to integrity[53], where all the evidence was given on the presumed criminal liability of the persons charged as probable offenders.

129. In addition, through its Comprehensive Plan for Reparations, which the TRC recommended as a guideline for the implementation of reparations for the victims of violence, in order to speed up the trial of human rights violations, the TRC recommended: "establishing a system for the protection of human rights based on specialized bodies set up at the political and judicial level and within the Public Prosecutor's Office, especially in areas where violence produced the greatest impact".[54]

130. According to the narrative account of activities produced by the High-Level Multisectoral Committee in charge of monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation[55], the decision was taken to appoint a Public Procurator with special responsibility for conducting criminal proceedings with respect to human rights violations.[56]

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[51] Ibid, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter 2, Institutional Reforms, pg. 128. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[52] Ibid, Chapter 2, Institutional reforms, http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[53] The cases submitted by the TRC for breach of the right to integrity are as follows: case 9: disappearances, acts of torture and extrajudicial executions at the military base of Los Cabitos (1983-1985); case 13: the torture and extrajudicial execution of Jesús Oropeza (1984); case 16: serious injuries caused to Domingo García Rada (1985); case 41: disapearances and acts of torture at the military base of Los Laureles (Esaú Cajas) (1990); case 51: serious injuries caused to Ana Lira (1992); case 62: unjust incrimination and cruel treatment of Juan Mallea (1993); case 71: human rights violations at the military base of Capaya (1987-1989); case 72: the torture and assassination of Rafael Salgado Castilla (1992). The report on these cases is contained in the final report of the TRC, Tome VI, Chapter 2.

[54] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter 2, Institutional Reforms, pg. 128. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[55] The High-Level Multisectoral Committee in charge of monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation was set up by Supreme Decree No. 011-2004-PCM, of 5 February 2004, with the following functions: 1) designing a policy of peace, reconciliation and collective reparation for submission to the Council of Ministers; 2) coordinating the implementation of specific public policies aimed at fulfilling the objectives of peace, reconciliation and collective reparation; 3) supervising the implementation of planned objectives; 4) promoting the cooperation and collaboration of civil society in the achievement of the objectives of peace, reconciliation and collective reparation; 5) establishing and maintaining links with international human rights organizations with a view to obtaining technical cooperation.

[56] Narrative report of activities (March-August 2004) issued by the High-Level Multisectoral Committee in charge of monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation on 26 August 2004.

131. With regard to mechanisms established by the constitutional organs responsible for investigating and trying offences, the Public Prosecutor's Office, by Decision No. 631-2002-MP-FN of the Attorney General of the Nation's Office, published in the official journal *El Peruano* of 20 April 2002 (annex 14), set up a specialized Prosecutor's Office for enforced disappearances, extrajudicial executions and exhumation of illegal graves.

132. It was moreover established in Administrative Decision No. 170-2004-CE-PJ, published in the official journal *El Peruano* of 30 September 2004 (annex 15), that the existing National Criminal Division on Terrorism should also be competent to deal with the crimes against humanity referred to in chapters I, II and III of Title XVI-A of the Penal Code as well as common offences constituting cases of human rights violations, and related offences.

133. International agreements oblige States not only to specify acts which constitute torture in their legislation and to punish such acts with appropriate penalties that take full account of their seriousness, but also to adopt administrative, judicial and other effective measures to prevent acts of torture and of cruel, inhuman or degrading treatment in any territory under their jurisdiction, as well as to investigate and punish the perpetrators of such acts.

134. Despite that, the inquiries undertaken by the Office of the Ombudsman have led to the conclusion that on some occasions the investigations carried out by the authorities responsible did not fulfil the objective of clarifying the facts and punishing the perpetrators.

135. With respect to complaints brought against the Armed Forces, the facts were mostly investigated by the Army's own inspectorates, which in many cases cleared military personnel of all responsibility without investigating the matters in detail. A further concern is that in some cases of offences against the rights to life and to personal integrity occurring within military premises, the Army authorities assumed the judicial power to investigate such acts without taking account of the fact that the legal interests affected were not of a military nature. This situation was facilitated in part by the attitude of some representatives of the Public Prosecutor's Office, who, disregarding their legal obligations, refused to take cognizance of or investigate complaints whenever the cases occurred within military premises, or wherever the military courts had already begun an investigation or were conducting an investigation simultaneously.

136. With respect to cases of torture and ill-treatment attributed to personnel of the National Police, it is also true that investigations into the facts were chiefly carried out by the police inspectorates themselves, although it should be mentioned that other cases were investigated by the local criminal investigation units of the police.[57]

137. Despite the fact that the investigation and determination of responsibilities should be the responsibility of the relevant judicial bodies, in a number of cases the investigations (preliminary and/or administrative) conducted by the police authorities cleared the police personnel involved of all charges, despite the existence of evidence to the contrary.

138. A considerable number of cases were brought before the Public Prosecutor's Office, either on the basis of a complaint or due to the action of the Ombudsman's Office. Nevertheless, we consider that in many of those cases the necessary steps were not taken to clarify the facts.

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[57] In some cases the facts were investigated simultaneously by the inspectorate offices and by the equivalent criminal investigation unit.

Moreover, in the light of the Ombudsman's inquiries, it appears that both prosecutors and judges have difficulty identifying acts as torture or ill-treatment. Thus in some cases, an offence was improperly qualified as abuse of authority or causing bodily harm, without taking account of the fact that torture has its own features and characteristics which differentiate it from these other offences.

139. There are few cases of torture which have been denounced as such by the Public Prosecutor's Office and investigated by the courts,[58] and even fewer cases that have led to a conviction.[59]

2. Abolish the period of pre-trial incommunicado detention

140. As explained in the reply given to concern I.c (paras. 44-49), the Constitutional Court, in its decision of 3 January 2003, declared incommunicado pre-trial detention unconstitutional. As a restraint on fundamental rights, such a measure may be authorized only for the purposes of clarifying an offence by a judge and subject to justifiable criteria of reasonableness.

3. Do away with the automatic penalty of solitary confinement for anyone convicted of a terrorism offence

141. Similarly, in its decision of 3 January 2003, the Constitutional Court found unconstitutional the penalty of at least one year of solitary confinement from the date of trial, as well as the prohibition on sharing cells while serving the sentence, in the case of trials for the offence of terrorism (see reply to concern I.e, paras. 55-59).

4. Not apply amnesty laws in cases of torture

142. With regard to the use of amnesty laws, the TRC recommended:

> "… that the State powers should resort to amnesties, pardons and other presidential mercies not at their own discretion but within the strict framework established by the Inter-American Court of Human Rights. The TRC was and is opposed to any type of legal pardon by means of which the search for the truth and the satisfaction of justice are subordinated to reasons of State. Reconciliation, as we understand it and present it in this report, presupposes the exclusion of external intervention in what must be a strictly juridical task".[60]

143. As described in the reply to point I.6 (paras. 80-82) of the Committee's concerns, since the judgment of the Inter-American Court of Human Rights in the *Barrios Altos* case on 14 March 2001 and the ruling interpreting that decision of 3 September 2001, Amnesty Laws

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[58] Among all the cases investigated by the Ombudsman, only in one did the courts sentence the perpetrators for the offence of torture.

[59] Note No. DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Deputy Ombudsman for Human Rights and Disabled Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[60] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter 2, Institutional reforms, pg. 128. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

Nos. 26479 and 26492 have no more legal effect and do not prevent the administrative and judicial authorities in any way from undertaking investigations into criminal acts constituting human right violations, explicitly including torture.

5. Review the special regime applied to convicted terrorists

144. The Committee recommended "that the special regime that applies to convicted terrorists should be reviewed, with a view to the gradual abolition of the virtual isolation and other restrictions that are inconsistent with the provisions of article 16 and may in certain cases amount to torture, as defined in Article 1 of the Convention (A/55/44, para. 61 e)).

145. The final report of the TRC included recommendations aimed at improving the treatment of convicted terrorists. In that respect, the TRC recommended improving the living conditions of prison inmates in terms of access to basic food and health services, as follows:

> "Improvement in the conditions of prison inmates, access to basic services (especially food and health), implementation and encouragement of working and educational activities. Access to civil society organizations as part of prison treatment (churches, NGOs, professional colleges, universities, etc.). With regard to improvements in the living conditions of prison inmates, priority should be given to women's health, since the Committee has found that one method of torture consisted in not attending to their basic health needs, such as pre- and post-natal care, lack of attention for women's physiological needs, or lack of care for gynaecological diseases. Similarly, the basic requirements of disabled persons deprived of their liberty should also be cared for.[61]

146. As mentioned in the reply to the Committee's concern in this regard (I.I paras. 101-108), the decision of the Constitutional Court of 3 January 2003 put an end to the measure of solitary confinement for persons convicted of terrorism and the National Prison Institute has undertaken a set of measures aimed at ensuring dignified living conditions for any person deprived of liberty, with a special effort to eradicate torture and cruel, inhuman or degrading treatment.

6. Establish a similar national registry to that pertaining to detainees for persons claiming to be victims of torture

147. By its very nature, torture constitutes a particularly serious crime and as such must be treated differently from other offences listed in criminal legislation. Owing to the total ban on torture, States are under an obligation to adopt effective measures to prevent acts of torture committed on their territory, to investigate reports of torture properly and, if cases are ascertained, to punish the perpetrators of such acts.

148. Nonetheless, if the struggle against torture is to be effective, there is a need to know how many cases have been reported to the authorities. Such information is not easy to obtain, however, because as mentioned earlier the Public Prosecutor's Office does not keep a computerized register of the complaints it receives. In this sense, the proposal to set up a national registry of persons detained and sentenced to custodial penalties (RENADESPPLE) makes a worthwhile contribution and should be carefully evaluated to assess its effectiveness.

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[61] Ibid, Chapter on Comprehensive Plan for Reparations, pp. 132 and 133. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

149. One very short-term alternative would consist in making all prosecutors register torture complaints separately from those concerning other offences. Such a registry would include written or oral complaints of torture submitted to the Prosecutor's Office, complaints filed with the National Police and later forwarded to the Prosecutor's Office, cases of torture investigated *ex officio* by the Public Prosecutor's Office, and cases of assault against personal integrity referred by the Office of the Ombudsman, amongst others. The information gathered in this special registry would subsequently be incorporated in the Information Support System for prosecution work (SIATF) until the system is finalized.[62]

7. Return jurisdiction from military courts to civil courts in all matters concerning civilians

150. On this point, the TRC recommended the constitutional and legal incorporation of military courts in the judiciary under the authority of the Supreme Court of Justice:

> "Establish the Supreme Court of Justice's control over decisions by military courts in order to unify the system of justice. Military courts should deal only with offences arising in the context of military duties and should not have jurisdiction over civilians or police officers. The rules of the Code of Military Justice should be revised in order to specify "official misconduct" and to ensure that offences which may be considered ordinary should come under the Penal Code. Moreover, the additional Protocol II to the Geneva Conventions should be brought up to date.[63]

151. The Office of the Ombudsman filed an application for unconstitutionality regarding several articles of Act No. 24150, amended by Legislative Decree No. 749, governing the role of the Armed Forces during states of exception. In this respect, the Constitutional Court issued Judgment No. 0017-2003-AI/TC on 16 March 2004 acceding partially to the application and in its preamble giving an opinion on military justice and military offences. It is worth emphasizing the importance of such a ruling by the chief interpreter of the Constitution concerning this subject owing to the effect it has on the internal legal system and on all court decisions adopted in future.

152. According to article 138 of the Political Constitution of 1993, the authority to administer justice emanates from the people and is exercised by the judiciary through its hierarchical organs. There are principles which govern the administration of justice, including unity and exclusivity; these refer on the one hand to the indivisible nature of jurisdiction and on the other to the fact that the judicial function must be exercised only by magistrates of the judiciary (who must engage in judicial activities to the exclusion of all others).

153. According to article 139.1 of the Political Constitution of 1993, there are two exceptions to the above-mentioned principles, which are the existence of military and arbitral jurisdiction, both considered to be special jurisdictions. According to the constitutional rules, however, such courts

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[62] Note No. DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Deputy Ombudsman for Human Rights and Disabled Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

[63] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter on Comprehensive Plan for Reparations, pg. 127. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

have limited powers, unlike ordinary courts of justice, which enjoy universal and total jurisdiction.

154. With regard to the functional operation of military courts, constitutional limits are established under article 173 of the Constitution, which states that:

> "In the case of misconduct in the course of duty, members of the Armed Forces and National Police are answerable to the relevant courts and the Code of Military Justice. The latter's provisions are not applicable to civilians, except in cases of the offence of treason against the country and acts of terrorism as determined by law. The cassation option referred to in article 141 applies only in cases involving the death penalty. *Whoever infringes the rules of Obligatory Military Service shall be subject to the Code of Military Justice.*"

155. As explained, military courts hold jurisdiction only over offences relating to misconduct by members of the Armed Forces and the police in the course of duty. Nevertheless, this would not allow the assumption that military courts may be considered as a personal system of justice application to all military and police personnel regardless of the type of offence they have committed, since that quality alone is not sufficient to justify jurisdiction by the military courts, for which other requirements are stipulated by the Constitutional Court in its above-mentioned ruling.

156. In this respect it must be pointed out that, according to the content of the constitutional provisions and the opinion of the Constitutional Court expressed in its judgment No. 0010-2002-AI of 3 January 2003 passed in response to the unconstitutionality action filed by more than 5,000 citizens against Decree Laws Nos. 25475, 25659, 25708 and 25880 and supplementary and related rules, civilians cannot be subjected to military jurisdiction, which would constitute a breach of the right to natural judgment recognized in article 139.3 of the 1993 Constitution.

157. In giving its ruling on that application, the Court stated that even in the case of treason against the country or terrorism, military courts cannot be competent to judge civilians and consequently declared unconstitutional article 4 of Decree Law No. 25659 and article 2 of Decree Law No. 25880 and, by extension, also articles 2 and 3 of Decree Law No. 25708. In its preambular considerations 104, 105 and 107, the Court stated as follows:

> "104. (…) In effect, a literal interpretation of article 173 of the Constitution, not incompatible with the opinion of the Inter-American Court, would mean that this constitutional rule does not in fact allow civilians to be tried by military courts; on the other hand, according to the law, certain provisions of the Code of Military Justice may be used to prosecute civilians accused of committing acts of terrorism or treason against the country in the ordinary courts.
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> 105. According to that interpretation of the constitutional rule, which complies with human rights treaties, furthermore, as required by the Fourth Final and Transitional Provision of the Constitution, **it must not be considered that military courts are competent to conduct trials against civilians**, even in cases of the offences of terrorism and treason against the country, since that would imply an opposition between constitutional law and natural law.
>
> (…)

> 107. In addition, the Constitutional Court considers that this last possibility should not be understood as a general rule, but always as an exceptional case, on the assumption that, **by their very nature the provisions of the Code of Military Justice are not intended to apply** – even from a procedural point of view – **to offences and wrongdoing committed by civilians, but only to those committed by military personnel in the course of their duties**. (…)"

158. It would appear moreover from the constitutional rules that the military courts should not be competent to try members of the Armed Forces or police who have committed common offences where the legal interest involved has nothing to do with misconduct in the course of duty, which is subject to military discipline. On this subject, the Constitutional Court, in considering 129 of its judgment No. 0017-2003-AI/TC, made it clear that: "(…) not every offence committed by military of police personnel should or may be tried by military courts, since **if the offence is a common one, it must be tried by the judiciary, regardless of the military status of the accused concerned**."

159. In other words, since it is unacceptable to argue that common offences committed by personnel of the Armed Forces or the police be investigated, tried and punished by military courts, it cannot be possible to let the military courts determine the criminal responsibility of either civilians or military personnel suspected of committing common offences, and even less so in the case of offences involving human rights violations, on account of the seriousness of the damage resulting from such violations and the importance of the legal interests protected. In this respect, the Constitutional Court, when referring to the vacation of judgment in order to ensure that its ruling should take effect within 12 months, stated that:

> "(…) **the prosecution of military personnel for offences against human rights and in general all offences which may be considered crimes against humanity** lies outside the vacation of judgment period, since by their subject matter such cases **cannot be tried by military courts**, the new organization of which has justified that vacation of judgment, and since, as pointed out in STC No. 2488-2002-HC/TC, **they are by nature imprescriptible**."

160. In this respect, in *considering* 9 of the Constitutional Court's ruling, in Order No. 2488-2002-HC/TC of 18 March 2004 issued on the occasion of the filing of a *habeas corpus* action in favour of Genaro Villegas Namuche for violation of his rights to life, to due process, to legitimate defence and to individual freedom, the Court stated that:

> "(…) **The investigation of the circumstances in which human rights violations were committed and, in the event of death or disappearance, of the fate of the victim is by its very nature imprescriptible.** The persons directly or indirectly affected by a crime of that magnitude are entitled to know at any time, even though a long period may have elapsed since the date of the offence, who was the perpetrator, when and where the crime was committed, how it occurred, why it was perpetrated, and where the victim's remains are located, amongst others. (…)"

161. It is important to appreciate the legal significance of those rulings insofar as the Constitutional Court explicitly recognizes that offences involving human rights violations may in no event be settled in military courts and that the investigation of events involving this type of crime is never subject to time limitation.

162. On the other hand, if the jurisdiction of military courts is to be restricted to so-called official misconduct, there is a need to work out an appropriate definition thereof. Recently, the Constitutional Court did refer to the content of this type of offence and its opinion has made a real contribution to internal Peruvian law, since there has previously been no clear definition of what was understood by official misconduct.

163. Thus, preambular paragraph 134 of the Constitutional Court's ruling No. 0017-2003-AI/TC explains the basic characteristics of service-related offences as follows:

"A) In the first place **such offences must affect legal interests of the Armed Forces and the National Police governed by the legal system**, and they must relate to the fulfilment of the constitutional and legal purposes for which they are intended. They are offences against specific legal interests pertaining to the existence, organization, operability and fulfilment of the purposes of military institutions.

If so, the conduct which is considered illegal must be provided for in the Code of Military Justice. However, the mere fact that it appears in that Code is not sufficient to make illegal behaviour a real service-related offence. **For an illegal act to be effectively considered as "service-related" or "military", the following conditions must also apply:**

i) A member of the Armed Forces or the National Police must be in breach of a duty pertaining to his status; that is to say, in breach of a functional obligation, whereby the person was obliged to maintain, or to perform or not to perform, a type of conduct aimed at satisfying an interest which is institutionally considered as useful by law; in addition, the form and manner in which the act is committed must be incompatible with the principles and values enshrined in the Constitution of the Republic (military duty).

Therefore, **the refusal to obey commands detrimental to the constitutional order and fundamental human rights does not constitute a breach of military or police duty**.

ii) Through the breach of military duty, the offender **must have impaired a military legal interest in such a way as to jeopardize the constitutional functions legally assigned to the Armed Forces and the National Police**.

iii) The offence **must be of sufficient gravity and must justify the issue of a warning and a penal sanction**.

B) In the second place, **the perpetrator of the military penal offence must be an active member of the Armed Forces or the National Police, or the offence must have been committed by the person while on active service**. This clearly signifies that all retired personnel must automatically be excluded from the scope of military jurisdiction, if the intention is to subject them to a military trial for events occurring after their retirement.

C) In the third place, **the illegal act** affecting a legal interest protected by the military or police institutions **must have been committed on active service**, that is to say, on the occasion of such service."

8. Consider making the declarations under articles 21 and 22 of the Convention

164. Peru's recognition of articles 21 and 22 of the Convention against Torture was formalized in a Note signed on 8 July 2002 by the Minister for Foreign Affairs of the Republic of Peru and a Note dated 28 October 2002 from the General Secretariat of the United Nations acknowledging that recognition. The Peruvian State recognizes the competence of the Committee against Torture to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Convention, in accordance with article 21 of this international instrument.

165. The Republic of Peru also recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State party of the provisions of the Convention, as provided for in article 22 of the Convention.[64]

166. Peru based its decision on the fact that full and strict respect, protection and promotion for human rights and fundamental human freedoms is one of the keystones of its policy. One of its prime objectives is therefore to strengthen international instruments and mechanisms aimed at supervising its implementation, such as the Convention and Committee against Torture (annex 16).

III. CONCLUSIONS OF THE COMMITTEE BASED ON THE CONFIDENTIAL INQUIRY MADE UNDER ARTICLE 20 OF THE CONVENTION

167. The results of the confidential procedure conducted under the terms of Article 20 of the Convention are summarized in document A/56/44 (paras. 144-193). The conclusions contained in the written report of the Committee members who made the inquiry, submitted in May 1999, fall under the following headings: a) complaints received during the inquiry; b) legal issues; c) places of detention visited; d) cooperation by the Peruvian authorities in the inquiry; e) concluding observations. A summary of each conclusion is given below in bold, in each section.

A. Complaints received during the inquiry

168. The large number of complaints of torture, which have not been refuted by the information provided by the authorities, and the similarity of the cases indicate that torture is not an occasional occurrence but has been systematically used as a method of investigation (A/56/44, para. 163).

169. In accordance with the reply given with regard to the Committee's first concern following Peru's third periodic report, it may be noted that compared with the period prior to 1999, and especially since November 2000, the situation regarding torture has undergone substantial changes with the establishment of the democratic regime, even though some complaints may still be heard. Most of those filed, however, either have been or are currently subject to investigation by the administrative, prosecution or judicial authorities.

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[64] Note RE (DHU) No. 2-19-B/579 of 1 September 2004 transmitted by the Human Rights Directorate of the Ministry of Foreign Affairs to the Secretary of the National Human Rights Council of the Ministry of Justice.

170. The situation that prevailed in the period 1980-2000 was described in the final report of the Truth and Reconciliation Committee (TRC) as follows:

> "The Commission concludes that during the period 1983 to 1997 agents of the Peruvian State engaged in systematic and generalized torture. The Commission has recorded 4,826 cases of torture perpetrated by agents of the State, self-defence committees and paramilitaries, of which 4,625 are attributed exclusively to State agents. These cases demonstrate that torture and other cruel, inhuman or degrading treatment were not isolated events but on the contrary were practices which became institutionalized and were accepted as 'standard methods' of combating subversion and they became more general and widespread over the years."[65]

171. Still in line with the reply given in section I.A of the Committee's concerns regarding the third periodic report and the information processed by the State through various agencies and institutions, it may be confirmed that the more recent cases of torture do not resemble the pattern of behaviour of State agents in the period 1980-2000. The problems which still subsist arise from structural shortcomings, inadequate training and a situation of impunity which is being reversed. Defence Report No. 42 (annex 1) reflects this change. On the basis of the information obtained and the actions of the Ad Hoc Public Procurator's Office in the *Montesinos-Fujimori* cases, the State through the Government has currently been running six judicial criminal trials in which 89 persons stand charged of grave human rights violations (annex 17).

172. In addition, the Office of the Ombudsman, in Defence Report No. 86, concludes that with regard to the cases submitted by the TRC to the Ombudsman (annex 18), out of a total of 47, 34 are being prosecuted by the Public Prosecutor's Office and 13 by the courts. In the cases being investigated by the Public Prosecutor's Office, 1,511 victims have been identified, as well as 1,097 suspects. It is true that only 11 persons have been convicted, while 161 are being tried and 925 are being investigated by the Prosecutor's Office, but this still represents an effort to deal with a situation of generalized and systematic human rights violations.

173. The Public Prosecutor's Office has reported on the investigations conducted into 109 cases, where the Inter-American Commission on Human Rights concluded that the State was responsible for forced disappearances, extrajudicial executions and torture. The cases are undergoing a general first stage of investigation by the prosecution, but subject to considerable limitations arising from logistics, budgets and functional organization, which partly explain the limited progress achieved to date[66] (annex 19).

B. Legal issues

174. It will not be possible to eradicate torture in Peru without radical changes in this area. The cases covered by the 1998 legislation must not go unpunished. It is imperative to take legislative measures for reparation and compensation of the victims (A/56/44, para. 165).

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[65] Final Report of the Truth and Reconciliation Commission, Tome VI, Chapter 1, subchapter on "Torture and other cruel, inhuman or degrading treatment", Conclusion 1, pg. 258. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[66] Note No. 168-2004-MP-FN-1 F.S.C.L.DD.HH of 22 October 2004 transmitted by the Titular Senior Prosecutor representing the Public Prosecution Department before the National Human Rights Council to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

175. The conclusions regarding the need the ensure that cases prior to 1998 should not remain unpunished, expressed in the above paragraph and in the replies to the Committee's concerns with regard to this matter, to a large extent explain why the State has taken so seriously its duty to investigate and punish all acts of torture and cruel, inhuman and degrading treatment, in a process which is still in its initial stages.

176. With regard to the need to take legislative measures for the compensation of victims, the Truth and Reconciliation Committee (TRC) established that reparations are both a right of victims and a duty of the State.

177. The foregoing principle also covers victims of torture, insofar as the TRC considers victims to include:

> "Generally speaking all persons or groups of persons who for the purposes of or on account of the internal armed conflict which the country underwent between May 1980 and November 2000 have been subjected to any acts or omissions that violate the rules of international human rights law, such as: enforced disappearance, abduction, extrajudicial execution, assassination, enforced displacement, arbitrary arrest and violation of due process, enforced recruitment, torture, rape, and wounds, injuries or death inflicted in the course of attacks that violate international humanitarian law."[67]

178. In order to compensate the victims of violence, including victims of torture, the TRC recommended a Comprehensive Plan for Reparations, the general objective of which is: "to repair and compensate the violation of human rights as well as social, moral and material losses or damage suffered by victims as a result of internal armed conflict."[68] This plan makes provision for various types of reparations, including forms of symbolic, health, educational, financial, collective and other compensation. A table showing reparations programmes for victims of torture was given in chapter II.A.3 (see para. 121 above).

179. In order to follow up the TRC's recommendations and to coordinate the implementation of public policies specifically aimed at the fulfilment of peace, reconciliation and collective reparation goals, a High-Level Multisectoral Committee was set up with responsibility for monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation. Within one year of the issue of the TRC's final report, the High-Level Committee found that a number of steps had been taken to achieve collective reparations. The Programme Framework of State Action in the Area of Peace, Reparation and National Reconciliation was approved, as well as the Supreme Decree extending the benefits of comprehensive health insurance to the victims of internal conflict suffering from mental health problems and the Ministerial Decision setting up a list of victims' organizations.[69]

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[67] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter on Comprehensive Plan for Reparations, pg. 149. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[68] Ibid, pg. 147. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[69] Narrative account of activities implemented by the Committee (March-August 2004) drawn up by the High-Level Multisectoral Committee in charge of monitoring State actions and policies in the areas of peace, collective reparation and national reconciliation, of 26 August 2004.

180. The legislation in force contains a series of weaknesses which hinder the practical implementation of the obligations established by the Convention, as it impedes the investigation of complaints and fosters impunity for the guilty, all of which is attested by the small number of judicial investigations of cases of torture and even smaller number of government employees who have been punished (A/56/44, para. 166).

181. The earlier replies explained the ways in which some of these adverse factors are being overcome, including the process of reform which has been initiated within the institutions responsible for administering justice, and within the security forces (National Police and Armed Forces), as well as a decision by the Government to press for trials concerning serious human rights violations occurring prior to the year 2000.

182. With regard to the time limits for pre-trial detention, the limitation of detention by the police, even though authorized by the Constitution, should not exceed 24 hours (A/56/44, para. 167).

183. This situation might require a decision concerning the text of the Constitution, which is currently suspended in the Congress of the Republic. The new Code of Penal Procedure due to take effect in 2006, however, will provide certain guarantees regarding pre-trial detention (annex 10), in an effort to ensure that it does not expose persons deprived of their freedom to torture and ill-treatment.

184. The limitation of the duration of incommunicado detention provided for in article 133 of the Code of Penal Procedure should be enforced (A/56/44, para. 167 *in fine*).

185. This principle, as explained earlier, was reaffirmed by the Constitutional Court in its ruling of 3 January 2003, mentioned above, and in the new Code of Penal Procedure (article 280, annex 10).

186. Medical examinations of all detainees should be made mandatory, within 24 hours of the time of detention and whenever prisoners are transferred and on release (A/56/44, para. 168).

187. This problem is also better regulated in the new Code of Penal Procedure (article 264.2) and has been partially provided for in the Code of Penal Enforcement.

188. Judges should order an immediate prior examination of detainees as soon as the latter are brought before them. Detainees should be explicitly asked when making their first statement whether they have been subjected to torture or not. Failure to ask should invalidate the accused's statement. Any physician should put the same question to detainees and include both the question and the answer in the medical report (A/56/44, para. 169).

189. These requirements are already met insofar as judges are obliged to order an immediate prior examination of detainees (article 264.2 of the Code of Penal Procedure). The points concerning the mandatory need to ask detainees about any torture they might have endured and the rule that failure to do so should invalidate the accused's statement, as well as the requirement that the physician should put the same question to detainees and include the answer in their medical report have not been covered by the regulations.

190. Any provision that is in contradiction with the power of the Public Prosecutor's Office to investigate any offence from the outset should be repealed. Substantial penalties should be established for any interference with the exercise of this power (A/56/44, para. 170).

191. There are at present no legal provisions that limit or hinder the power of the Public Prosecutor's Office to investigate an offence. As was explained earlier, the jurisdiction of military courts has been enormously restricted with the ruling of the Constitutional Court of 16 March 2004 (annex 11), reaffirmed with its ruling of 9 June 2004 (annex 20).

192. The public defender service should be given the legal powers and human and material resources necessary for ensuring that every detainee is able to avail himself of it from the time pre-trial detention is ordered (A/56/44, para. 171).

193. The National Justice Department, which is responsible for assigning defence counsel, has been taking measures to improve the system by training lawyers and extending their coverage to more courts and criminal divisions in the country.

194. Every judge on learning from the accused's statement that he has been subjected to torture should order a medical examination and have the statement referred to the Public Prosecutor's Office for investigation of the complaint. If the grounds for the complaint are substantiated, criminal proceedings should be conducted as part of the same proceedings and should be expressly referred to in the judgment (A/56/44, para. 172).

195. The judges are free to act in conformity with the recommendations of the Committee against Torture. Nevertheless, according to the internal system of penal procedure, it is not possible in the same proceedings brought against a person to initiate and settle a dispute based on an allegation of torture; the matter would need to be referred to the Public Prosecutor's Office, which may *ex officio* investigate, study and ascertain the facts.

196. Provisions prohibiting police officers who have helped in the preparation of self-incriminating statements from being called on to testify should be repealed (A/56/44, para. 172 *in fine*).

197. This issue was discussed in Order No. 010-2002-AI-TC (annex 8), which finally concluded that, when weighing up conflicting interests, priority should be given to the security of the police officer, since the defence can use other forms of evidence in support of their allegations in criminal proceedings (paras. 147-163). One vote, however, was cast in favour of declaring article 13 of Decree Law No. 25475 unconstitutional.

198. In the course of proceedings conducted in the National Terrorism Division, statements have been obtained and used as evidence from police officers who helped with the administrative investigations that originated the criminal proceedings.

199. All legal provisions or rules of inferior rank which limit the competence of criminal court judges to hear applications for habeas corpus should be repealed. In particular, any provision which vests judges outside the ordinary justice system with competence to hear applications for habeas corpus should be repealed (A/56/44, para. 173).

200. The new Code of Constitutional Procedure, approved by Act No. 28237 of 28 May 2004 and published in the official journal *El Peruano* of 31 May 2004 (annex 21), expressly stipulates that the court which is competent to hear applications for habeas corpus is the criminal court (article 28).

201. Legislation should be enacted to the effect that, in cases which might involve any of the offences against humanity referred to in Title XIV-A of the Penal Code, an inquiry shall be opened even when the alleged perpetrators have not been individually identified (A/56/44, para. 174).

202. This measure cannot be implemented in the internal system of criminal procedure, although investigations by the prosecution can remain open until the suspected perpetrator has been identified.

203. Legislation should be enacted stipulating that, where offences against humanity referred to in Title XIV-A of the Penal Code are concerned, criminal proceedings and sentencing shall not be time-barred and the granting of amnesty or pardon shall be inadmissible (A/56/44, para. 174 *in fine*).

204. This proposal has been included in the draft reform of the Penal Code, which aims to align criminal law with the Statute of the International Criminal Court. The issue is currently under discussion in the Justice and Human Rights Committee of the Congress of the Republic.

205. The trend towards the expansion of the jurisdiction of military courts, intensified with the promulgation of Legislative Decree No. 895 of 24 May 1998, should be reversed, in order to limit the jurisdiction of such courts strictly to official misconduct (A/56/44, para. 175).

206. On this point, the TRC recommended the constitutional and legal incorporation of military courts within the judiciary under the authority of the Supreme Court of Justice:

> "Establish the Supreme Court of Justice's control over decisions by military courts in order to unify the system of justice. Military courts should deal only with offences arising in the context of military duties and should not have jurisdiction over civilians or police officers. The rules of the Code of Military Justice should be revised in order to specify "official misconduct" and to ensure that offences which may be considered ordinary should come under the Penal Code. Moreover, the additional Protocol II to the Geneva Conventions should be brought up to date.

207. It is worth remembering that Legislative Decree No. 895, the law governing the offence of aggravated terrorism, was repealed in its entirety by article 4 of Act No. 27569, which establishes a new form of investigation and judgment for anyone tried and convicted under Legislative Decrees Nos. 895 and 897 of 29 November 2001. In this way, the jurisdiction of military courts over this type of offence is fully abrogated. It is established in article 1 of the above-mentioned Act that:

> "All persons tried or convicted under the provisions of Legislative Decrees Nos. 895 and 897 shall be retried in ordinary courts of the judiciary, in accordance with the terms of the Penal Code and the ordinary procedure of the Code of Penal Procedure and related legislation."

208. In addition, the Constitutional Court's ruling of 9 June 2004 restricts the material competence of military courts definitively in conformity with constitutional law (annex 20).

C. Places of detention visited

1. Ministry of the Interior facilities

209. A long period of detention in the cells of detention places […], i.e. two weeks, amounts to inhuman and degrading treatment. Longer periods of detention in those cells amount to torture.

210. The practice of forcing persons under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor also amounts to torture. Measures should be taken to:

a) Improve in particular the hygienic conditions of detention;

b) Ensure that periods of detention are in strict conformity with the limits established by law; and

c) Prohibit the practice of forcing detainees under interrogation to spend the night in the interrogation rooms lying handcuffed on the floor (A/56/44, paras. 178 and 179).

211. The measures adopted by the Constitutional Government are aimed at guaranteeing the right to personal integrity of any person deprived of liberty. The Ministry of the Interior comes under the supervision of its internal control office or inspectorate and at the same time is subject to the constitutional authority of the Public Prosecutor's Office, the Office of the Ombudsman and the International Committee of the Red Cross.

2. Ministry of Justice facilities

212. The Committee members are deeply concerned about the deplorable detention conditions (no electricity, no drinking water, temperatures of minus 10° or 15° C without heating, etc.) of the maximum security prisons at Challapalca and Yanamayo […]. Detainees have been transferred to those prisons for a month or more as a form of disciplinary sanction. The deplorable conditions of detention are further aggravated by health problems due to the altitude at which the prisons are situated. The Committee members are of the view that detention conditions in both those establishments amount to cruel and inhuman treatment and punishment. They fully support the initiative taken by the Ombudsman's Office in June 1997 to recommend to the Directorate of the National Penitentiary Institute (INPE) not to transfer prisoners or prison personnel to Challapalca. The Committee members are of the view that the Peruvian authorities should close Challapalca and Yanamayo prisons (A/56/44, paras. 183 and 184 *in fine*).

213. With respect to Challapalca prison, the TRC expressed the opinion that:

> "The existence of Challapalca prison goes against the very finality of the prison system. The conditions of the prison system there aggravate the physical and mental state of inmates and its closure has been called for on repeated and varied occasions. The TRC endorses those calls in its recommendations to the Government."

214. In view of this opinion, the TRC recommended that "… the Ministry of Justice should order the definitive and immediate closure of the maximum security prison of Challapalca. In addition, that prisoners detained at the penal establishment of the naval base of Callao should gradually be transferred to civilian prisons, subject to proper safeguards. Once this has been done, those premises should be returned to the Navy."[70]

215. In response to the recommendation of the Committee against Torture, the prison authority decided to close the premises in March of the current year 2004. The plan has failed to materialize so far, however, because it is awaiting the completion of a new prison establishment known as "*Piedras Gordas*" in the district of Ancón, department of Lima.

216. In keeping with that decision, since March 2004 no more inmates have been admitted to that prison, which currently holds only nine detainees.[71] When the new INPE management took over, Challapalca had 26 prisoners.[72] In other words, this provides an objective indicator that reflects the prison policy of the Constitutional Democratic Government with regard to human rights, and in particular its response to the commented recommendation of the Committee against Torture, which endorsed the recommendations of the Inter-American Committee of Human Rights, the Truth and Reconciliation Commission of Peru, the International Committee of the Red Cross, the Ombudsman's Office and the country's human rights organizations.

217. Peru's policy is to close down Challapalca prison as soon as possible when the new prison of *Piedras Gordas* has been completed and is ready to receive inmates.

218. The Committee members are of the view that the Peruvian authorities should redouble their efforts to solve the problem of prison overcrowding and improve conditions of hygiene (A/56/44, para. 184).

219. The INPE, an independent, technical and decentralized department of the Justice Department, is the State entity responsible for the whole national prison system. The current administrative management policy, launched in March 2004, rests on the principle of authority and unrestricted respect for human rights. The INPE has undertaken a series of measures aimed at preventing the perpetration of acts of torture or cruel, inhuman or degrading treatment, and if they occur, to ensure their rapid detection, investigation and punishment.[73]

220. In response to the Committee's concerns arising from the inquiry conducted under article 20 of the Convention, one of the measures included in the operational plan for 2005 is to provide suitable conditions for all persons deprived of liberty. In this respect, all social and productive support programmes and projects implemented in prison establishments have been

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[70] Final report of the TRC, Tome IX, part 4: TRC Recommendations for a national commitment to reconciliation, Chapter on Comprehensive Plan for Reparations, pg. 127. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

[71] Note No. 747-2004-INPE/1 of 20 October 2004 transmitted by the President of the INPE to the Secretary-General of the Ministry of Justice.

[72] Note No. 755-2004-INPE/1 of 22 October 2004 transmitted by the President of the INPE to the Secretary-General of the Ministry of Justice.

[73] Note No. 749-2004-INPE/1 of 21 October 2004 transmitted by the President of the INPE to the Secretary-General of the Ministry of Justice.

incorporated in the general budget under the headings of food, education, labour assistance, health and basic services for the prison population.

221. In addition, one of the INPE's stated objectives is to improve the living conditions of the prison population through more investments in infrastructure, health and the purchase of mattresses. In terms of infrastructure, works will be undertaken to improve health facilities and basic services, to expand accommodation and to improve maintenance in general. In the area of health, more is to be spent on medicines, hospital facilities and taking on more medical staff, as well as acquiring blankets and mattresses.[74] New infrastructure works will include the construction of a new prison centre in the department of Lima, in the district of Ancón, which will be called "*Piedras Gordas*". The new facility should be completed fairly soon[75] and will make it possible to reduce overcrowding in the prison of Lurigancho in the district of Lima, which holds the most detainees in the whole country.

3. Ministry of Defence facilities

222. The Peruvian authorities should put an end to the conditions of sensorial deprivation and the almost total prohibition of communication which cause persistent and unjustified suffering amounting to torture at the Callao naval base (A/56/44, para. 186).

223. As noted in the summary account of the results of the proceedings concerning the inquiry on Peru, conducted under the terms of Article 20 of the Convention, the findings of the Committee members in charge of conducting the inquiry into conditions of detention at the maximum security prison of the Callao naval base (CEREC) were made during the visit to Peru by Committee members from 31 August to 13 September 1998.

224. It should be noted that since then the conditions of detention of inmates has changed considerably, chiefly due to a gradual adjustment to international standards of measures adopted concerning the living conditions and treatment of prisoners, which are contained in Supreme Decree No. 024-2001-JUS of 18 August 2001, approving the Regulations of the Maximum Security Detention Centre of the Naval Base of Callao (annex 22).

225. The main changes include those affecting communication and visiting rules, as well as those related to prisoners' working, cultural and educational activities. With regard to visits, according to regulations internees have the right to receive the visits of up to three direct relatives (to the second degree of kinship) for three hours twice a week. In addition they can received "special visits", subject to fulfilling certain requirements.

226. Unlike the conditions that prevailed previously, during the visits prisoners have direct contact with their relatives and/or lawyers. In this respect, even though it was established in Supreme Decree No. 002-2004-JUS of 6 February 2004 that family and special visits should take place "in visiting rooms set up for the purpose", a condition which was applied for a time to all

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[74] Note No. 747-2004-INPE/1 of 20 October 2004 transmitted by the President of the INPE to the Secretary-General of the Ministry of Justice.

[75] Note No. 755-2004-INPE/1 of 22 October 2004 transmitted by the President of the INPE to the Secretary-General of the Ministry of Justice.

prisoners of the CEREC, this rule has ceased to be applied as a result of the action taken by the Office of the Ombudsman in response to complaints received on the subject.[76]

227. With regard to working, cultural and educational activities, the CEREC regulations enable prisoners to engage in artistic, manual and occupational activities voluntarily, on the sole condition that such activities do not entail the use of tools which might constitute a security risk. Similarly, the regulations provide prisoners with access to cultural and educational activities, for which library and media facilities have been constituted.

228. As a result of visits carried out by the Office of the Ombudsman to CEREC premises,[77] it has been possible to ascertain that the restrictions on communications among prisoners or with security personnel have changed significantly, considering that inmates may interact with each other in the reading room or in premises used for artistic, manual or working activities.

229. In order to engage in these activities, according to the information obtained by the Ombudsman's Office, prisoners stay outside their cells from 9 a.m. until 6 p.m. In addition, they are allowed to make use of their right to open-air walks in the CEREC yard (in groups of three for two or three hours at a time).

230. Lastly, although the Callao prison has introduced a reasonable internal regime in conformity with Supreme Decree No. 024-2001-JUS, it is still improper to maintain civilians in detention in a military establishment, a situation which still persists despite the fact that some important steps were taken in the right direction during the transitional government, such as setting up a commission in charge of evaluating and concluding studies for the construction and operation of a wing for inmates detained at the Callao naval base, the construction of which has not yet been completed.[78]

231. It is worth pointing out, however, that Supreme Decree No. 013-2004-JUS of 6 November 2004 (annex 23) did regulate the system of visits to high-risk, tried and convicted prisoners detained at the CEREC. Such visits must take place in visiting rooms, which must provide the necessary facilities to ensure respect for integrity, privacy and defence rights.

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[76] On 28 January 2004 the Office of the Ombudsman sent Note No. 018-2004-DP-APP to the President of the Technical Committee of CEREC, notifying the latter that although in certain circumstances, for the sake of security, it may be necessary to provide a physical separation between prisoners and their visitors, this should be applied only as an exceptional and temporary measure of security, for prisoners whose conduct might jeopardize prison security or in cases where the prisoner or his relatives breach security rules. Such a measure should not be applied, however, any longer than necessary. It was added that the measure should be applied only on the basis of an individual evaluation of risks, strictly on security grounds, and should not be used as a method of punishment or deterrence. It was also stressed that such restrictions needed to be reviewed at regular intervals, and that they should be subject to a duly substantiated decision establishing a reasonable period during which the measure should apply in order to ensure full transparency. A further point made was that in view of the nature of the rights at risk, visiting rooms should consist of adequate premises, compatible with human dignity and the exercise of defence rights, especially the confidentiality of exchanges between prisoners and their lawyers. This criterion was adopted in several rulings handed down by the courts in response to complaints lodged by a number of prisoners against the rules applying to visiting rooms.

[77] Through the Penal and Penitentiary Affairs Programme, the Ombudsman's Office has been carrying out regular visits to prisoners of the Callao naval base since December 2000.

[78] Note No. DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Deputy Ombudsman for Human Rights and Disabled Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

D. Cooperation by the Peruvian authorities in the inquiry

232. The Committee members making the inquiry thank the Peruvian authorities for their excellent cooperation (A/56/44, para. 188).

E. Concluding observations

233. The Committee notes that the State party expressed its disagreement with the Committee's conclusion concerning the existence of systematic torture in Peru and repeated that torture was not a tolerated practice there. It went on as follows:

a) The State party rejected the suggestion that the anti-terrorist legislation constituted per se a valid ground for the Committee's conclusion under 5.1 that there had been acquiescence on the part of the authorities;

b) Prior to the current penal law on torture, the existing legislation had in fact permitted the punishment of acts of torture;

c) It was not necessary to adopt legislative measures that would permit redress and compensation for torture victims since such legislation already existed and both the Constitution and the Supreme Court's case law established the obligatory nature of the medical examination of detainees before they went before the courts;

d) The constitutional powers of the Public Prosecutor's Office with regard to the investigation of offences had not been curtailed;

e) By the Act of 23 December 1998, the public defender system had been restructured;

f) The investigation and punishment of torture cases as part of the same proceedings in which the cases were detected would not be practicable;

g) There were no constitutional provisions banning testimony by police officers who had contributed to the preparation of self-incriminating statements;

h) It was not practicable to legislate for a judicial examination when the perpetrators of the acts of torture had not been individually identified;

i) By a decree of 18 February 1999, the Regulations relating to the Regime and Progressive Treatment for Prisoners Accused and Convicted of Terrorism or Treason had been amended, adding one hour to the yard time allowed prisoners, subject to the special maximum-security or special medium-security regimes (A/56/44, para. 189).

234. Several subsequent State measures were in line with the Committee's recommendations. A summary of six of these measures is given below (see A/56/44, para. 190 a)-f)):

a) Establishment of a Presidential Commission for the Strengthening of Democratic Institutions;

b) Modification of Legislative Decree No. 895, insofar as special terrorism offences will fall within the competence of the ordinary courts, while habeas corpus

proceedings relating to such offences may be initiated in accordance with the relevant legislation;

c) Adoption of two rulings by the Supreme Court of Justice to the effect that crimes against humanity, including torture, fall within the competence of the ordinary courts and must be dealt with in accordance with the ordinary procedure;

d) Formulation of a plan to terminate the practice of appointing provisional judges and prosecutors within two years;

e) Termination of the state of emergency in practically all areas of the country;

f) Opening of two new prison facilities and the granting of over 1,500 pardons and reprieves, which has helped to reduce the prison population and improve conditions for prisoners.

235. The Specialized Secretariat for Presidential Pardons of the National Human Rights Council of the Ministry of Justice has given an account of the effort the Government has been making for the study, assessment and granting of presidential pardons to detainees who are awaiting trial or have been sentenced to custodial offences.

Presidential pardons, other pardons and reprieves and commuting of sentences granted (August 1997 - August 2004)

Year	*Standing Committee for the assessment of pardons* [a]	*Special High-Level Committee on the granting of reprieves to detainees awaiting trial* [b]	*Act No. 27234 Committee* [c]	*Committee on the commuting of sentences* [d]	*Pardons and reprieves granted on humanitarian grounds* [e]
1997	224	-	247	-	[f]
1998	337	27	108	-	[f]
1999	479	2	48	-	[f]
2000	2.174	25	39	-	18
2001	432	-	268	2	47
2002	82	-	52	2	34
2003	53	-	1	-	14
2004	32	-	-	2	31
Committee totals	3.813	54	763	6	144

Total for the period August 1997 to August 2000: 4,780

[a] Statistical data prepared and updated by the Committee's technical secretariat.

[b] Statistical data prepared and updated by the technical secretariat of the Committee, which was set up by Act No. 26329 (7 June 1994).

[c] Statistical data prepared and updated by the Committee's technical secretariat. The data for the period 1997-2000 were taken from the study prepared by the Ad Hoc Committee of the Ombudsman's Office.

[d] Statistical data prepared and updated by the Committee's technical secretariat.

[e] Statistical data prepared and updated by the person in charge of processing pardons and reprieves on humanitarian grounds.

[f] No information available for this year.

236. The Standing Committee for the Assessment of Pardons embodies the constitutional power of the President of the Republic to grant a pardon to whoever has received a custodial sentence for committing a common offence. It is worth noting that in almost eight years such pardons have been granted to 3,813 detainees. Since 1999, a time not covered by the third periodic report at the time of preparing the fourth periodic report, pardons have been granted to 3,252 persons, which has served to reduce overcrowding in the prisons and, subject to careful consideration and analysis, to moderate the severity of the sentences passed by the courts, also subject to all the considerations and prudence which such constitutional powers of the President would imply.

237. In the case of the Special High-Level Committee on the granting of reprieves to detainees awaiting trial, which by its nature is concerned with the granting of pardons to persons who have not yet been definitively convicted of an ordinary offence, in practice this presidential power has not been much exercised, in view of the fact that with the full restoration of the democratic regime there has been no real need to do so where autonomous and independent courts have not yet determined the legal situation of persons awaiting trial for common offences. This is why only 27 pardons were extended to accused detainees from 1999 to date, and none has been granted since 2001.

238. The Act No. 27234 Committee, that deals with pardons, reprieves and commuting of sentences in cases of terrorism and treason, has basically served to redress situations of injustice which, on account of the application of anti-terrorist legislation that disregarded the requirements of due process, led to many convictions of innocent persons, chiefly through the use of "faceless" courts. This situation is currently being remedied.

239. Between 1999 and this year, the Act No. 27234 Committee proposed and the President of the Republic granted pardon for 271 persons convicted of alleged terrorist or treason offences on being found innocent. The Committee was also empowered to propose commuting sentences, a facility which the Government has exercised in moderation, commuting altogether 135 sentences. In this case, however, it was not a question of benefiting innocent persons but rather others who, recognizing their criminal liability, nevertheless proved willing to detach themselves from their subversive organizations, underwent rehabilitation in prison and showed that they were capable of resettling successfully in society. Approval was given for the commuting of a number of sentences on these grounds and in these circumstances.

240. The even more exceptional power of pardoning the offence of terrorism has been exercised extremely cautiously, so that between 1999 and the present day it has only been applied in two cases, for the same reasons as those indicated in the case of pardons for persons accused of common offences.

241. In other words, pardons have been extended to 408 persons either convicted or accused of offences of terrorism or treason, as a means of remedying situations of injustice which the courts themselves were unable to put right. The pace and intensity of the Act No. 27234 Committee's work declined considerably once the Constitutional Court's ruling of 3 January 2003 had nullified all trials conducted against civilians before military courts on charges of treason and all trials conducted before the judiciary by "faceless" courts. Thanks to the new criminal legislation issued by the Democratic Constitutional Government in 2003 and the reorganization of the National Terrorism Division of the judiciary, it has been possible to review the trials of most persons convicted of terrorism or treason, subject to the guarantee of due process, a situation which is still being remedied at the present time.

242. The Committee on the Commuting of Sentences has proposed and the President of the Republic has granted commuted sentences to six persons convicted of common offences since 1999.

243. It is also worth mentioning the granting of pardons or reprieves on humanitarian grounds, that is, pardons allowed as a result of a serious worsening in the state of health or the advancing age of prisoners, which render incarceration unnecessary and rather require the return of very sick or elderly detainees to their families. Consideration is currently being given to setting up a committee on pardons and reprieves granted on humanitarian grounds, with the introduction of a uniform set of criteria and procedures to deal with this particular problem and so as to avoid persons being kept in detention when, beyond their criminal liability, they do not deserve to serve out their full sentences or can no longer hope for a final judgment on the part of the courts. This is another way in which the Democratic Constitutional Government is making an effort to ensure that prisons are not overcrowded and that conditions of detention are improved.

244. Establishment, within the Ombudsman's Office, of a Team for the Protection of Human Rights in Police Stations, with responsibility for verifying the situation of detainees (A/56/44, para. 190 g)).

245. The Team for the Protection of Human Rights in Police Stations was set up in January 1999 as a means of responding to the many complaints of alleged violations of the rights to liberty and personal integrity attributed to police personnel. The work carried out in this area is preventive in nature. Regular but unexpected visits are carried out in premises of the National Police in order to interview detainees, to check their legal situation, ensure that their rights are being respected and that the duties of the authorities involved are being duly fulfilled. The information gathered in the course of these visits is kept in a register.

246. Between February 1999 and June 2003, the Ombudsman's Office carried out 2,656 visits to police stations throughout the country and interviewed 3,858 detainees. Initially, in Lima and in departments without Ombudsman representations, these supervisory activities were conducted by the Team for the Protection of Human Rights in Police Stations, while in other areas of the country visits were made by local branches of the Ombudsman's Office.

247. With the restructuring of the Ombudsman's Office and the establishment of new branches, this sort of work has gradually been taken over by the latter, each acting within its own territorial jurisdiction.

248. The visits carried out by the Ombudsman's Office have revealed situations where the fundamental rights of detainees, including the right to personal integrity, have been breached. Such visits have in some cases led to immediate measures to restore the detainees' rights.[79]

249. Establishment of a Single Register of Complaints for crimes against humanity, to be compiled by the Public Prosecutor's Office (A/56/44, para. 190 h)).

250. This question has been answered in section II.B.6 of the Committee's concerns under article 19 (para. 147-149).

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[79] Ibid.

251. Inclusion in the "Forensic Procedures" of the "Forensic examination procedures for the detection of injuries or death resulting from torture". Intensification of training activities on subjects relating to human rights within the National Police (A/56/44, paras. 90 i) and j)).

252. On this subject, under the point concerning the development and application of article 10 of the Convention, a detailed description is given of training activities in human rights conducted between 1999 and the present day by the appropriate department of the Ministry of the Interior under the responsibility of the National Police. We would refer to that description, reiterating that such training has been intensified and is now reaching a greater number of police officials in different parts of the country, helping to achieve higher professional standards among this law enforcement body and thus prevent human rights violations.

253. The Committee has continued to receive disturbing information from non-governmental organizations about cases of torture which occurred after the visit to Peru by two of its members (A/56/44, para. 191).

254. Recognizing that complaints have been received of alleged acts of torture, the Government of Peru wishes to reiterate the explanations it gave earlier under the points concerning new complaints and the lack of investigation thereof. This is not a form of systematic practice and whenever complaints are received they are investigated, although admittedly owing to certain obstacles and limitations very few of the complaints are actually heard and resolved by the Public Prosecutor's Office or the courts.

255. The Committee takes note with particular interest of the statement made by Mr. Diego García Sayán, Minister of Justice of Peru, at the fifty-seventh session of the United Nations Commission on Human Rights regarding the intensive efforts made to provide effective tools for the protection of human rights. In particular, he announced that the necessary steps were being taken to establish a truth commission which would clarify the violations of human rights, including torture, that had occurred in Peru between 1980 and 2000, and to formulate a policy of redress for the victims (A/56/44, para. 192).

256. In several replies above, the Government has explained the purpose and activities of the Truth and Reconciliation Commission, especially in dealing with the phenomenon of torture, regarding which it has expressed conclusions and recommendations on a number of points which coincide with the concerns, recommendations and conclusions of the Committee.

257. The Committee expresses hope that the Government of Peru will take energetic and effective steps to rapidly end the practice of torture, in accordance with the provisions of the Convention (A/56/44, para. 193).

IV. INFORMATION ON MEASURES RELATED TO THE IMPLEMENTATION OF THE CONVENTION

ARTICLE 1

258. The right to personal integrity is guaranteed under article 2.1 of the Political Constitution, which establishes that every person has the right "(…) to life, to his identity, to his moral, mental and physical integrity, and to his free development and well-being (…)". Further on, article 24 h) provides that "no one may be subjected to moral, psychological or physical violence, nor subjected to torture or inhuman or degrading treatment (…). Statements obtained by violence are without effect. Whoever resorts to violence must incur responsibility therefor".

259. Act No. 26926 further strengthens the protection of this fundamental right by specifying the offence of torture in the following terms (article 321 of the Penal Code):

> "Any official or public servant, or any person acting with his consent or acquiescence, who inflicts upon another serious pain or suffering, whether physical or mental, or subjects that other person to conditions and methods which destroy his personality or impair his physical or mental capacity, even without causing physical pain or mental distress, for the purpose of obtaining a confession or information from the victim or from a third party, or of punishing the person for any act that he may have committed or is suspected of having committed, or of intimidating or coercing the person, shall incur a custodial penalty of not less than 5 and not more than 10 years.

If the torture should result in the injured party's death or cause serious injury and the person inflicting it could have foreseen that outcome, the custodial penalty shall be, respectively, not less than 8 or more than 20 years, and not less than 6 or more than 12 years."

260. It is worth mentioning that the above-mentioned Act also punishes the conduct of any physician or medical staff who cooperate in the perpetration of the offence of torture, the sentence in that case being similar to that passed on the perpetrators themselves (article 322 of the Penal Code).

261. While this law is important to the extent that it specifies the offence of torture, which has opened the way to identifying acts that were previously considered as forms of assault or abuse of authority according to their true nature, the Office of the Ombudsman has drawn attention to problems related to this type of offence arising from the fact that some prosecutors and judges still wrongly describe acts which would qualify as torture as merely offences of causing bodily harm or abuse of authority.[80]

262. The definition of torture adopted by the Truth and Reconciliation Commission (TRC) followed the most recent developments in international criminal law, especially the Rome Statute of the International Criminal Court.

> "By torture, the Commission understands any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person whom a public official holds in his custody or under his control. Where torture is committed as part of a

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[80] Ibid.

generalized or systematic attack on a civilian population and with knowledge of that attack, then it may be deemed a crime against humanity. Torture is not understood to include pain or suffering arising solely from lawful sanctions imposed by the State and which are a normal or fortuitous consequence of those sanctions.

The distinction between acts of torture and other cruel, inhuman or degrading treatment or punishment is a question of intensity. According to the United Nations Declaration on the Protection of All Persons from Being Subject to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, "torture constitutes an aggravated and deliberate form of cruel, inhuman or degrading treatment or punishment".[81]

263. The judgment of the Constitutional Court in a case of forced disappearance of persons stands out in particular. In the Court's ruling (Order No. 2488-2002-HC/TC) of 18 March 2004 regarding Mr. Genaro Villegas Namuche, a victim of forced disappearance, the *right to truth* was recognized as a new fundamental right. Thus, although it is not expressly recognized in Peru's Political Constitution, the right to truth is fully protected, arising in the first place from the State's obligation to defend fundamental rights and from the protection of the courts. Nevertheless, the Constitutional Court considered that, wherever reasonably possible and in special and unprecedented cases, implicit constitutional rights must be developed so as to allow better protection of and respect for human rights, since this will help strengthen democracy and the State, in accordance with the terms of the current Constitution.

264. In the considerations to which the judgment refers, the Court establishes the limits of application of the right to truth. According to the Court, the right is two-dimensional, being both collective and individual. The collective right refers to the Nation's right to know the facts or events brought about by the many forms of State or non-State violence. The Constitutional Court considers furthermore that the right to truth rests on a requirement which is derived from the principle of the republican form of government. For instance, information concerning the manner in which the anti-subversive struggle was conducted in the country, and how the criminal activity of terrorists was conducted, constitutes a genuine public or collective interest and also contributes to the full realization of the principles of publicity and transparency on which the republican regime is based.

265. Alongside this collective dimension, the right to truth has an individual dimension, whose beneficiaries include victims, their families and their relatives. It resides in the knowledge of the circumstances in which human rights violations were committed and, in the event of decease or disappearance, of the fate which befell the victims as such, a knowledge that cannot be subject to time limitation. It must be remembered that the right of victims and their relatives is not limited to obtaining economic reparation, but also includes the need for the State to undertake an investigation into the facts, considering that a full knowledge of the circumstances of each case is also part of a form of moral reparation which the country and in the event the victims require for their enjoyment of democracy.

266. By interpreting the Constitution, it is possible to recognize new rights as fundamental, despite the fact that they are not expressly mentioned. In this respect, the Constitutional Court has pointed out that "(…) it is possible within the content of an expressly recognized right to identify

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[81] Final report of the TRC, Tome VI, Chapter 1, subchapter on "Torture and other cruel, inhuman or degrading treatment", Conclusion 1, p. 213. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

another right which, though it may be understood as part of the former right, may nevertheless be looked upon as an independent right".[82]

267. It should also be pointed out that article 3 of the Political Constitution (Title I, The person and society, Chapter 1, Fundamental rights of the person) contains the so-called *"open clause on fundamental rights"*, according to which:

> "The enumeration of rights in this chapter does not exclude others that the Constitution guarantees, nor does it exclude rights of an analogous nature or that are founded on human dignity, or on the principles of the sovereignty of the people, the democratic rule of law and the republican form of government."

268. In its judgment concerning Mr. Villegas Namuche, the Constitutional Court applied the "open clause of fundamental rights", recognizing the Right to Truth as a *new fundamental right*, which was a real innovation in Peruvian constitutional jurisprudence, since until then there were no specific pronouncements about the content of the above-mentioned article 3; the Court had merely established that the use of this clause should be reserved "only for special and completely new situations entailing the need to recognize a right that requires protection at the highest level".[83]

269. In the above-mentioned case, the sister of Villegas Namuche asked the Peruvian State to give back her brother, who had disappeared on 2 October 1992, alive or to inform her where his remains were located. In the courts, this request was declared well-founded in the first instance but inadmissible in the second, on the grounds that the disappearance or absence of Genaro Villegas Namuche had not been demonstrated, in accordance with the relevant provisions of the Civil Code. This in fact brought the case to the Constitutional Court.[84]

270. In Legislative Decision No. 27622, published in the official journal *El Peruano* on 7 January 2002, Peru endorsed the Inter-American Convention on the Forced Disappearance of Persons, adopted at Belem do Pará, in Brazil, on 9 June 1994, in conformity with articles 56 and 102.3 of the Political Constitution of Peru. In its Article II, this Convention stated that:

> "(…) Forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

271. The Convention also deems the offence of forced disappearance to be permanent as long as the fate or whereabouts of the victim has not been determined. Therefore if new criminal legislation is introduced, it will be applied to whoever has perpetrated the offence, but without giving rise to the retroactive application of the law. It may be pointed out that the permanent

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[82] Judgment in Order No. 895-2001-AA/TC published on 16 March 2003, para. 3, No. 5.

[83] Ibid, para. 5, No. 5.

[84] According to article 202.2 of the 1993 Constitution, the Constitutional Court is competent to deal with decisions of the courts denying actions of habeas corpus. For this to take effect, the necessary appeal must be brought.

character of this offence is related to the type of rights which are affected, since the practice of forced disappearance implies the violation of several fundamental and imprescriptible rights, such as freedom of movement, effective supervision of the courts and physical integrity, amongst others, finally leading to impunity for offenders.

272. The Code of Constitutional Procedure, Act No. 28237, published in the official journal *El Peruano* of 31 May 2004, stipulated in article 25 that habeas corpus applied automatically in the event of an action of omission jeopardizing or harming the following rights which are deemed to constitute individual freedom: personal integrity, the right not to be subjected to torture or to inhuman or humiliating treatment, or to be subjected to violence to obtain statements, and the right not to be the victim of forced disappearance. Furthermore, in accordance with the terms of article 1 of Administrative Decision No. 170-2004-CE-PJ, published in the official journal *El Peruano* of 30 September 2004, the current National Criminal Division is also competent to judge crimes against humanity as specified in chapters I, II and III of Title XVI-A of the Penal Code, as well as common offences which are deemed cases of human rights violations and all related offences.

273. The forced disappearance of persons was a practice used systematically in Peru during the internal armed conflict which the country experienced during the decade of the 1980s and the beginning of the 1990s, as a consequence of the activities of terrorist groups and of the State's response to subversion. Then under Supreme Decree No. 065-2001-PCM, published on 4 June 2001, the Truth and Reconciliation Commission (TRC) was set up in order to investigate the process, events and responsibilities of terrorist violence and human rights violations occurring between May 1980 and November 2000, attributable both to terrorist organizations and to State officials, and to propose initiatives aimed at establishing peace and concord among Peruvian citizens. Concerning forced disappearance, the TRC concluded as follows:

> "Throughout the internal armed conflict, State officials used the practice of the forced disappearance of persons in a generalized and systematic manner as a means of combating subversion. The information analysed by the TRC leads us to believe that the practice does not amount to a series of isolated and sporadic events but that it constitutes a pattern of conduct of State officials responsible for counter-subversion activities. The thousands of cases reported both to the TRC and to other institutions (such as the Public Prosecutor's Office or the Ombudsman's Office) reflect a generalized practice, a systematic practice and even both simultaneously at certain times and in certain places.[85]

274. The impunity which prevails over these events has not escaped the Court's analysis, which is why it states quite clearly in its judgment that "the material perpetrators and their accomplices responsible for human rights violations cannot escape the legal consequences of their acts". It was starting from this position adopted by the Court regarding the need to avoid impunity in cases of human rights violations that the Court went on to recognize the right to truth as a new fundamental right. The need to analyse constitutional rules in the light of real requirements is here perfectly illustrated.

275. In order to guarantee the right to truth, the Court has ruled that for all persons affected by a crime against their human rights there is a right to know: a) who perpetrated the act; b) when and where it was perpetrated; c) how it occurred; d) why it was perpetrated; and e) where their

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[85] TRC Final report. Tome VI, pg. 126. Report published on 28 August 2003.

remains are located, amongst other aspects. The Court also asserts that the right to truth is deemed to be permanent, even though a considerable time may have passed since the unlawful acts were committed. It therefore concludes that investigations into human rights violations are not subject to time limitation.

276. Following on from this description regarding the scope of the right to truth, the Court declared the habeas corpus action to be well founded and ordered the Public Prosecutor's Office to initiate the appropriate investigation into the disappearance of Genaro Villegas Namuche; at the same time it ordered the executing judge in charge of the case to inform the Court every six months regarding the state of the investigations. There is no doubt that this decision by the highest body responsible for interpreting the Constitution is completely unprecedented in its almost eight years of operation.

277. This ruling in fact provides the courts and the Public Prosecutor's Office with a judgment that can shield them against any governmental rule or order aimed at avoiding the identification and punishment of those responsible for human rights violations, not only in cases of forced disappearance, but also in cases of assassinations and massacres, arbitrary executions, torture, cruel, inhuman or degrading treatment, and other crimes. The Court's ruling thus significantly contributes to the fulfilment by the Peruvian State of its international obligations with respect to human rights.

ARTICLE 2

278. On the basis of the information supplied to the Committee to explain the measures adopted in response to the concerns, recommendations and conclusions submitted under the procedures of Articles 19 and 20 of the Convention, the Peruvian State has taken appropriate legislative, administrative and judicial measures. Notable amongst these are the reforms of the Code of Constitutional Procedure, the anti-terrorist legislation, the Code of Penal Procedure currently in preparation, the debate about reform of the Constitution, the reform of the Penal Code and the incorporation of transitional provisions until the full entry into force of the Code of Penal Procedure.

279. From the administrative point of view, it is worth mentioning the establishment of the Truth and Reconciliation Commission, as well as a commission to follow up its conclusions and recommendations. These deal with several matters relating to the campaign against torture, giving rise to legislative, administrative, remedial and judicial measures. In addition, decisions and policies have been implemented in the Ministry of the Interior and the Ministry of Justice in order to ensure that institutional regulations and practices respect the right to personal integrity. From the judicial point of view, there are several rulings of the Constitutional Court worth mentioning, which have already been described above.

ARTICLES 3 TO 9

280. In the Government's view, no particularly significant changes have occurred with regard to the application of these rules, apart from those mentioned in connection with the Committee's concerns and recommendations under Article 19 of the Convention and the conclusions under the procedure provided for in Article 20; for answers to these questions reference may be made to the earlier text.

ARTICLE 10

281. With the restoration of democracy in November 2000, starting with the transitional Government of Dr. Valentín Paniagua Corazao, Peru entered a new stage of consolidation. The policy has been continued under the present Government presided over by Dr. Alejandro Toledo Manrique, which has led amongst other measures to the establishment of an educational policy in the field of human rights and the creation of a national plan for its dissemination and teaching, approved under Act No. 27741 promulgated on 28 May 2002, which amended article 1 of Act No. 25211, in conformity with the provisions of article 14 of the Political Constitution of Peru. According to the new legislation, the Political Constitution of Peru, as well as human rights law and international humanitarian law, must be disseminated and systematically and uninterruptedly taught at all levels of the educational system, both civil and military, as well as in university and non-university higher education.

282. According to the general framework described above, the compulsory teaching of human rights law and international humanitarian law must include the full application and strict implementation of all international acts and agreements, as well as the protection of fundamental rights at national and international level.

283. The Ministry of the Interior has been making considerable efforts to provide suitable education and training to personnel of the National Police on aspects related to the prohibition of torture and cruel, inhuman or degrading treatment. This work has been intensified as part of the modernization process, which is aimed at dignifying the police force, at the same time as improving the services provided to the public by that institution and bringing it closer to the community.

284. In 1999 the Ombudsman's Office, in coordination with the International Committee of the Red Cross and the Pacification and Human Rights Directorate of the Ministry of the Interior, organized the first and second parts of the training course for instructors and disseminators of human rights law and international humanitarian law, which took place from 17 May to 19 June 1999 and from 18 to 29 October of that year, respectively.

285. In October 2001, the General Directorate of the Peruvian National Police (PNP) issued Directive No. DPNP-05-4B-2001-B, in which it made arrangements "to provide intensive human rights instruction" in the police force in order to "guarantee full respect for and application of human rights rules and standards" and to "help consolidate the ethical and moral values of police personnel, by forging a code of conduct and behaviour complying with basic human rights standards".

286. On 5 April 2002, Ministerial Decisions Nos. 521-2002-IN/0103, 522-2002-IN/0103 and 525-2002-IN/0103 were issued, in which the Ministry of the Interior approved Framework inter-institutional cooperation agreements signed with the Legal Defence Institute, the Evangelical Association "*Paz y Esperanza*" (Peace and Hope) and with Amnesty International (Peruvian section), all aimed at strengthening the Peruvian National Police as an institution and providing human rights training. On the same date, a Framework inter-institutional cooperation agreement was signed with the Office of the Ombudsman and the Peruvian Institute of Education in Human Rights and Peace (IPEDEHP), aimed at the implementation of a human rights training programme for members of the PNP.

287. As a result of the last-mentioned agreement, a training module was prepared on "Human rights, ethics and police duties".[86] This consists of: a file containing five booklets on the theme; a document containing the rules that govern the police force, which include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; an animated video and the sets on "Promoting debate" and "Human rights for all".

288. Lastly it is worth mentioning that on 12 December 2003 Ministerial Decisions Nos. 2179-2003-IN, 2181-2003-IN, 2182-2003-IN, 2183-2003-IN and 2184-2003-IN were issued, in which the Ministry of the Interior approved Framework inter-institutional cooperation agreements with the Human Rights Commission (COMISEDH), Amnesty International (Peruvian section), the Episcopal Social Welfare Committee (CEAS), the Office of the Ombudsman and the IPEDEHP, as well as with the association *Paz y Esperanza*, with a view to combining efforts made to implement training programmes in human rights for members of the PNP.[87]

A. Measures taken by the Ministry of the Interior

289. The Ministry of the Interior has signed a number of inter-institutional cooperation agreements with non-governmental organizations in order to train police personnel on human rights issues, with positive effects on subsequent operations of the Peruvian National Police (PNP). Improvements have been made in the training given to PNP personnel on human rights issues and the application of those principles in the activities of the police forces. It must be admitted, however, that much remains to be done. Human rights courses have also been included in the study curricula of the PNP's School of Officers and Non-Commissioned Officers.

1. Principle training agreements for members of the Peruvian National Police (2002-2003)

290. Inter-institutional cooperation agreement between the Ministry of the Interior, the Ombudsman's Office and the Peruvian Institute of Education in Human Rights and Peace (IPEDEHP) with a view to implementing the programme "Human rights training for members of the Peruvian National Police" (Ministerial Decision No. 0523-2002-IN/0103 of 4 April 2002). The agreement remains in force until all the programme's activities have been completed. *This agreement was not implemented for lack of funding.*

291. Framework inter-institutional cooperation agreement between the Ministry of the Interior and Amnesty International (Peruvian section) in support of Torture-free districts (DLTs) and Human rights education (Ministerial Decision No. 0525-2002-IN/0103 of 4 April 2002). *Agreement in effect until 31 December 2002.*

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[86] This module was prepared by the Peruvian Institute of Education in Human Rights and Peace (IPEDEHP) in coordination with the Office of the Ombudsman and the Permanent Secretariat of the National Human Rights Commission of the Ministry of the Interior.

[87] Note No. DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Assistant Ombudsman for Human Rights and Disable Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

292. The following educational activities have been implemented:

a) Course on human rights and against torture, given at the PNP police station of Huaycán and Santa Clara, Lima, in September 2002, providing training for 29 police officials and 7 civilians, with the support of Amnesty International (Peruvian section);

b) Workshop on human rights and against torture, held in Cerro de Pasco, providing training for 15 police officials and 25 civilians, in October 2002, with the support of Amnesty International (Peruvian section);

c) Workshop on human rights and against torture, held in el Cusco, in October 2002, providing training for 17 police officials and 15 civilians, with the support of Amnesty International (Peruvian section);

d) Second forum against torture and for torture-free districts, for the benefit of police personnel of the police region of Ayacucho, human rights organizations, municipal authorities and civil society, given by the Peruvian section of Amnesty International and the Ayacucho School of Lawyers, on 31 January 2003.

293. Inter-institutional cooperation agreement between the Ministry of the Interior, the Ombudsman's Office and the Peruvian Institute of Education in Human Rights and Peace (IPEDEHP) with a view to implementing the programme "Human rights training for members of the Peruvian National Police" (Ministerial Decision No. 0523-2002-IN/0103 of 4 April 2002). The agreement remains in force until all the programme's activities have been completed. *This agreement was not implemented for lack of funding.*

294. Two workshop seminars on education, awareness and dissemination of practices for the prevention of torture were carried out in September 2003:

a) From 17 to 19 September 2003, in the town of Iquitos, with the participation of 20 police officials;

b) From 24 to 26 September 2003, in the town of Chiclayo, with the participation of 20 police officials.

295. Framework inter-institutional cooperation agreement between the Ministry of the Interior and the International Committee of the Red Cross for the training of police instructors in human rights.

296. *Seminar workshops – practical aspect.* Many seminar workshops on the application of human rights in the police forces (practical aspect) were held in a number of Peruvian towns:

a) Fifth seminar workshop held in the city of Lima, from 4 to 9 August 2003, for PNP personnel in criminal investigation and support for justice units;

b) Sixth seminar workshop held in the city of Lima, from 25 August to 6 September 2003, for personnel of the traffic police;

c) Seventh seminar workshop held in the town of Pucallpa, Ucayali, from 1 to 16 September 2003;

d) Seventh seminar workshop held in the city of Lima, in September 2003, for female students of the PNP higher technical school of San Bartolo;

e) Eighth seminar workshop held in the city of Lima, from 3 to 8 September 2003, for personnel of the Special Services Unit of the 7th Territorial Police Directorate;

f) Ninth seminar workshop held in the town of Mazamari, Junín, from 8 to 20 November 2003;

g) Tenth seminar workshop held in the city of Lima from 3 to 7 November 2003;

h) Eleventh seminar workshop held in the town of Ayacucho from 17 to 22 November 2003;

i) Twelfth seminar workshop held in the town of Piura from 10 to 15 November 2003.

297. *Updating and consolidation seminars.* Two seminars were organized for the updating and consolidation of instructors in human rights applied to the police forces:

a) Third seminar held in Lima from 11 to 16 August 2003;

b) Fourth seminar held in Lima from 24 to 29 November 2003.

298. *Instructor training course.* Two training courses were held for police instructors in human rights applied to the police forces:

a) Sixth course in Lima from 11 August to 13 September 2003;

b) Seventh course in el Cusco from 13 October to 15 November 2003.

299. *Meeting with PNP generals and colonels.* A meeting was held with heads of the territorial directorates, police regions and specialized directorates in Lima on 15 August 2003.

2. Principle agreements on training for members of the Peruvian National Police (2004)

300. Inter-institutional cooperation agreement between the Ministry of the Interior, the Ombudsman's Office and the Peruvian Institute of Education in Human Rights and Peace (IPEDEHP) (Ministerial Decision No. 2183-2003-IN of 10 December 2003). This agreement remains in effect for two years from the date of signature. *Agreement in effect until 10 December 2005.* Viewing on ill-treatment and torture (IPEDEHP).

301. The workshop on ill-treatment and torture was replicated in several towns:

a) Huancapi – Ayacucho, from 15 to 18 January 2004, with IPEDEHP support, for ten police officials (two women and eight men);

b) Huanta – Ayacucho, from 22 to 23 January 2004, with IPEDEHP support, for ten police officials (one woman and eight men);

c) Chiclayo – Lambayeque, from 21 to 23 January 2004**,** with IPEDEHP support, for ten police officials (three women and seven men);

d) Ambo – Huánuco, from 29 to 31 January 2004**,** with IPEDEHP support, for ten police officials;

e) La Unión – Huánuco, from 12 to 14 February 2004**,** with IPEDEHP support, for ten police officials;

f) Tocache – San Martín, from 11 to 13 March 2004**,** with IPEDEHP support, for ten police officials;

g) Iquitos, 25 and 26 March 2004**,** with IPEDEHP support, for 35 police officials;

h) Ayacucho, 4 and 5 June 2004, with IPEDEHP support.

302. Framework inter-institutional cooperation agreement between the Ministry of the Interior and Amnesty International (Peruvian section) (Ministerial Decision No. 2181-2003-IN of 10 December 2004). This agreement remains in effect for two years from the date of signature. *Agreement valid until 10 December 2006.*

303. The following activities have been organized:

a) Seminar workshop on torture-free districts in el Cusco, with the participation of 35 police officials, on 27 and 28 May 2004;

b) Seminar workshop on torture-free districts in Huamanga – Ayacucho, with the participation of 35 police officials, on 20 and 21 August 2004;

c) Preparation of educational material on "Human rights and the prevention of torture in the police force", which didactically develops concepts and ideas concerning the police force as both rights leader and subject.

304. Framework inter-institutional cooperation agreement between the Ministry of the Interior and the Ica Human Rights Committee (CODEH-ICA), for training and instruction in human rights, signed on 5 August 2002. The agreement is to remain in effect for two years from the date of signature. *Agreement valid until 5 August 2004.*

305. The workshop on ill-treatment and torture was repeated in the following three cities:

a) Pisco – Ica, from 22 to 24 January 2004, with IPEDEHP support, for ten police officials (four women and six men);

b) Chincha – Ica, from 19 to 21 February 2004, with IPEDEHP support, for 11 police officials;

c) Chincha – Ica, from 19 to 21 May 2004, with CODEH-ICA support, for 40 police officials;

d) In Ica, on 22 and 23 July 2004, with CODEH-ICA support, for 65 police officials.

306. Framework inter-institutional cooperation agreement between the Ministry of the Interior and the International Committee of the Red Cross for the training of police instructors in human rights.

307. *Seminar workshops – practical aspect.* Three seminar workshops on the practical application of human rights in the police force were held as follows:

a) Thirteenth seminar workshop held in the town of Tacna, from 22 March to 2 April 2004;

b) Fourteenth seminar workshop held in the district of San Juan de Miraflores, Lima, from 10 to 22 May 2004;

c) Fifteenth seminar workshop held in the town of Tumbes, from 24 May to 5 June 2004.

308. *Updating and consolidation seminar.* The fifth seminar for the updating and consolidation of instructors in human rights applied to the police force took place in Lima from 19 to 23 January 2004.

309. *Instructor training course.* Three training courses for police instructors in human rights applied to the police force took place as follows:

a) Eighth course in Trujillo from 12 April to 15 May 2004;

b) Ninth course in Huánuco from 7 June to 10 July 2004;

c) Tenth course in Lima from 23 August to 25 September 2004.

B. Activities organized by the Ministry for Women and Social Development

1. Women deprived of liberty

310. The following educational activities were carried out:

a) Discussion group on "State actions in relation to the situation of women in prisons" (2002);

b) Study on the perception and assessment of women in three prison establishments in the country (2002);

c) Three training workshops for prison operators: Trujillo, Huánuco and Lima, on gender and human rights; for 180 professionals and 75 operators (2002);

d) Three informative talks on citizenship rights for women deprived of liberty in the prison centres of Trujillo, Huánuco and Lima; 80 incarcerated women took part (2002);

e) Workshop to gather proposals and suggestions regarding guidelines for equity and equal opportunities between women and men, for incorporation in public policies on

the issue of women deprived of liberty; 16 institutions connected with women in prison took part (335 persons);

f) Participation in an event coordinated with the INPE Treatment Directorate, on the theme of social policies and professional action.

2. Rural women

311. *Access to citizenship for rural women.* In coordination with the non-governmental organization Flora Tristán Centre for Peruvian Women, a pilot campaign was organized to facilitate rural women's access to identity papers, in the provinces of Cutervo (Cajamarca), Condesuyos (Arequipa) and Ayabaca (Piura), January-December 2003.

312. *Campaign for the right to identity of girls, young women and rural women.* The campaign was launched simultaneously on 22 July 2004 in four regions: Apurímac-Abancay, Oxapampa-Pasco, Huanta Ayacucho and Huancavelica. The campaign consisted in an information fair with multisectoral participation in each region and the free distribution of birth certificates in 13 provincial and district municipalities. Pasco region: province of Oxapampa; Ayacucho region: province of Huanta; Apurímac region: province of Abancay; Huancavelica region: provinces of Huancavelica, Angaraes, Acobamba and Castrovirreyna; and the district municipalities of Colcabamba, Huayllay Grande, Ccochaccasa, Ascensión and Yauli.

313. *Establishment of multisectoral regional committees* in Ayacucho-Huanta, Pasco-Oxapampa, Abancay-Apurímac and Huancavelica, for the implementation of the pilot campaign "For the right to identity of girls, young women and rural women" (duration: five months, from 22 July to 22 December).

3. Training courses for members of the police force and other

314. A number of training activities were organized as follows:

a) First national seminar on the rights of women and gender equity for the National Police. Ministry of the Interior (2 and 3 July); jointly organized with the Specialized Office for Women of the Police Ombudsman's Office, for 50 members of the Peruvian National Police (PNP);

b) Second national seminar on gender and women's rights in the National Police. Ministry of the Interior; 32 talks given on alternate days during the months of September (14), October (14) and November (4); jointly organized with the Specialized Office for Women of the Police Ombudsman's Office, for 700 members of the PNP in 2004:

c) Regional training seminar for defenders of the human rights of children, women and the elderly in Ciudadela Pachacutec;

d) Course for magistrates on the human rights of women in Moquegua;

e) Workshop on the international legal framework for women and its application in the macro-region Norte Chiclayo;

f) Mapping of civil society institutions in Chiclayo engaged in the social monitoring of women's rights;

g) Human rights workshop for women in charge of grass-root social organizations in Lima and the provinces (Abancay, Oxapampa, Huancavelica, 2004).

h) Human rights workshop for teachers in metropolitan Lima (2004);

i) Training on the human rights of women for local and regional government officials and authorities in Amazonas, Huánuco, Callao-Lima (first semester of 2004), Huancavelica and Apurímac (second semester of 2004);

j) Implementation of Stage 1 of the pilot campaign on identity documents for girls, young women and rural women, in four regions: Ayacucho (Huanta), Pasco (Oxapampa), Apurímac (Abancay) and Huancavelica (2004);

k) National campaign on the human rights of women within the framework of International Human Rights Day (10 December 2004).

4. Other actions

315. The Programme Against Family and Sexual Violence (PNCVFS) of the Ministry for Women and Social Development (MIMDES), running from February to July 2004, on the theme of human rights and citizenship, provided 135 training courses at national level, reaching a total of 6,206 beneficiaries. In addition, a further 22 events and fairs were held, providing 7,100 beneficiaries with information concerning their rights.

5. Draft legislation

316. Discussions are currently being held in committees of the Congress of the Republic concerning the draft Act No. 10383-2003-CR, amending article 231 of the Penal Code, adding sexual violence produced in the course of armed conflict or internal struggle to the list of crimes against humanity; and article 405 of the Penal Code, adding the conduct of officials or civil servants and acts of concealment as offences against the administration of justice, on which the Ministry for Women and Social Development has given a favourable opinion.

C. Actions sponsored by the Ministry of Defence through the International Humanitarian Law Centre (CDIH)

1. Objectives

317. To create awareness among members of the armed forces through training, discussion, research and dissemination of international humanitarian law (IHL) in military institutions. International humanitarian law is currently being incorporated in the doctrine and instruction manuals of the Armed Forces in order to be an integral part of the decision-making and missions of army personnel in strategic, operational and tactical areas. To ensure that enough personnel receive instruction in the subject in order to guarantee full respect for international humanitarian law.

2. Brief description of the International Humanitarian Law Centre

318. Peru has been a signatory to the four Geneva Conventions since 1956 and the two additional Protocols I and II since 1989, thus confirming its resolve to respect and disseminate the principles of international humanitarian law as widely as possible.

319. Peru's Armed Forces are the first in South America to have an International Humanitarian Law Centre, operating within the Armed Forces Joint Command.

a) Establishment of the International Humanitarian Law Centre in Decision No. CCFFAA No. 036 CCFFAA/CDIHFFAA of 19 February 2003 (annex 24);

b) Working structure for every institution of the Armed Forces dedicated to the implementation and planning of instruction and teaching, and incorporation of international humanitarian law in the doctrine and in the operational and tactical manuals of the Armed Forces.

320. Peru's Ministry of Defence was set up in 1987. It is currently responsible for laying down the country's national defence policy and, amongst others, for ensuring observance of international legal human rights standards and international humanitarian law. The Armed Forces Joint Command is a regular part of the organic and functional structure of the Ministry of Defence. It is responsible for the planning, preparation, coordination, direction and management of the joint military operations of the Armed Forces within the legal framework of international humanitarian law in fulfilment of the objectives of national defence policy.

3. Mission

321. To plan, regulate, direct and manage all activities related to the teaching of international humanitarian law, with a view to training and further instructing armed forces personnel for the efficient performance of their duties in compliance with international humanitarian law.

4. Purpose

322. To be the guiding authority on international humanitarian law in the Armed Forces of Peru, with links to other South American Armed Forces and to academic circles within the country.

5. Objectives

323. The Centre's objectives are the following:

a) To be the leading authority on international humanitarian law in the Armed Forces of Peru;

b) To incorporate international humanitarian law in the doctrine of the Armed Forces' institutions;

c) To apply international humanitarian law in strategic operational planning and in the tactical plans of the operational force on a permanent basis;

d) To provide instruction and training in international humanitarian law on a regular basis;

e) To train military personnel of other armed forces of Latin America;

f) To maintain academic exchanges with organizations and personalities related to international humanitarian law.

6. CDIH installations

324. The institutional headquarters of the first centre devoted to the study and development of international humanitarian law in our country is located at Av. Arequipa No. 310, Lima 1.

Summary of training and further training activities carried out by the International Humanitarian Law Centre (March 2002-September 2004)

Date	*Place*	*Instructors trained*
2002		
13-28 March	Lima	14 officers
15-23 April	Lima	28 officers
15-23 April	Tarapoto	20 officers
20-28 May	Lima	29 officers
15-19 July	Pucallpa	22 officers
5-9 August	Arequipa	23 officers
22-28 September	Piura	29 officers
21-25 October	Ayacucho	27 officers
2003		
3-21 March	Iquitos	31 students
3-21 March	Lima	28 students
9 April-9 May	Lima	22 students
21-30 May	Tarapoto	27 students
4-13 April	Pucallpa	31 students
1-10 October	Arequipa	30 students
5-14 November	Cuzco	31 students
2004		
2-11 March	Huancayo	37 students
2-11 March	Lima	30 students
22 March-22 April	Tumbes	31 students
11-21 May	Tacna	35 students (3 Bolivian officers)
1-11 June	Iquitos	
13-23 July	Lima	
16 August-17 September		
	Total	525 instructors

D. Activities sponsored by the Ministry of Education

325. The representative of the Ministry of Education before the National Human Rights Council, in Note No. 5987-2004-ME/SG-OA-UPER, gives a list of the activities sponsored by the Ministry of Education through the following bodies:

1. Tutorship and Full Prevention Office (OTUPI)

a) Programme on the culture of peace, human rights and the prevention of violence

326. Project entitled "Let us explore international humanitarian law" carried out with ICRC support. To date, the project has taken place in the following departments: Puno, Ayacucho, Amazonas, Lima, Callao, Arequipa, Moquegua, Tacna and Arequipa. The following modules are taught in all the workshops:

i) Module 1: What can witnesses do?

ii) Module 2: Limitation of war damage. Rules of warfare throughout history. Child soldiers. Anti-personnel mines.

iii) Module 3: International humanitarian law.

iv) Module 4: Development of international courts.

v) Module 5: War damage. Protection of prisoners. Re-establishing personal contacts.

b) Institution for the Defence of Children and Young Persons in Schools

327. In charge of running the campaign "Building a culture of respect for children and young persons", aimed at developing the free expression of views among children and young persons as social subjects entitled to rights. Implemented through the dedicated educational institutions of the Educational Emergence Programme as part of a strategy for promoting children's rights and obligations in school.

c) Care for children in early employment

328. Prepares teaching material on educational and gender equity and inter-cultural contacts, in response to teachers' need for tools to support educational activities with school children who study and work at the same time.

2. National Directorate of Secondary, Higher and Technical Education

329. At secondary school level, the Peruvian educational system is currently committed to a policy of disseminating human rights, the knowledge and culture of respect for the rule of law and observance of legal rules, including the Constitution. Within this framework, the development of a public awareness of the need to prevent torture and other cruel, inhuman or degrading treatment or punishment constitutes an educational objective of the highest importance.

330. For 2004, a new curriculum has been developed and set out in the document entitled "Basic curriculum design. National strategic curriculum development programme". Since 2002, the department has been running an experimental programme on the culture of lawfulness, pursuing the same objectives as outlined in the paragraph above.

3. National Department of Initial and Primary Education (DINEIP)

331. Promotes the development of a culture of peace, observance of human rights and the prevention of violence by encouraging the development of new skills, attitudes and values and the knowledge and defence of human rights. The following actions have been undertaken:

a) Basic curriculum structure

332. The DINEIP works in every area of development, personal, skills, capacities, attitudes, values and social aptitudes, in addition to promoting cross-cutting values in support of the work of improving attitudes among boys and girls, all within a framework of equity and the development of rights and obligations.

333. This year the DINEIP, on the basis of work completed in 2003, has undertaken to readjust the basic curriculum structure of primary education, so as to place the emphasis on the development of human rights and to meet the requirements of teachers and children.

334. Due consideration is given to the fact that the development of social aptitudes, attitudes, values and rights also depends on activities involving aspects of physical education, social relations and modern science, aimed at achieving the full development of children by paying due attention to their personal, physical, sexual and social development, amongst other aspects. This approach also supports instruction in the exercise of obligations and rights.

b) School textbooks and methodological guides

335. In all areas of development the methodological guides stress the need for an emotive atmosphere in the classroom propitious to freedom of opinion, respect for the rights of children and participation by all. This implies that all children, both boys and girls, may take decisions affecting their school and community activities and may assume equal responsibilities. In the values guide in particular, special emphasis is placed on the value of tolerance in the face of differences, especially gender difference, alongside the appreciation of every child regardless of his or her capacities or other human qualities.

336. These methodological guides are intended to provide teachers with working tools in the classroom, based on methods favouring integrated work practices and the participation of all children. Activities have been designed in particular, for instance, to allow girls to play an important part, thereby favouring gender equality. In the personal social area, more specifically where citizenship rights are concerned, the texts explicitly insist on equality of rights among children and the dignity, respect and equality of all human beings without any discrimination.

337. Supreme Decree No. 097-2003-RE, in article 3.3, states that all school textbooks that are published must contain the principles and rules of the Inter-American Democratic Charter, which must also be incorporated in the curriculum for initial, primary, secondary, higher and technical education and teacher training.

338. These actions are intended to remind teachers that by emphasizing equal opportunities and a culture of peace throughout education, we shall obtain future citizens who are fully aware of the role they must play in the development of society.

c) Joint actions at intra-sectoral level

339. The National Directorate for Initial and Primary Education (DINEIP) and the Tutoring and Full Prevention Office (OTUPI) have been developing activities concerning international humanitarian law with pupils in the third cycle of primary education (grades 5 and 6) in some pilot schools, and with students in secondary education through the programme "Let us explore humanitarian law".

340. This programme is composed of a series of teaching modules with a flexible structure, which allows teachers to select activities according to their time-table. It also makes it possible to introduce the course in different ways, either for instance in a single series of sessions or separately in time at regular intervals. The programme tries to give students in secondary education and the third cycle of primary education notions of humanitarian standards in their behaviour and in the way they interpret events occurring in the country, so as to encourage a more harmonious, respectful and solidary form of communal living among students of all societies, paying particular attention to situations of armed conflict and violence.

341. The contents of the programme prepare students in secondary education and the third cycle of primary education to identify conflicts and to accept the need to settle them peacefully. They also encourage students to adopt cooperative attitudes to the solution of conflicts which affect others or the social environment in which they live.

342. The contents are introduced taking into account the age and level of development of students in primary education, which implies that teachers must be aware of which modules to teach the children and which are best left for the next level of education.

d) Joint actions at inter-sectoral level

343. Jointly with the Ministry for Women and Social Development (MIMDES), the Ministry has been working on an equal opportunities plan as a means of reaffirming the inter-sectoral commitment to the achievement of equitable relations between men and women and ensuring effective equality of rights and opportunities, recognizing the inalienable right of all women and men to a dignified life and to full citizenship. The plan is intended to provide a policy instrument that can serve as general orientation and provide guidelines to agencies of the State and civil society for the implementation of actions aimed at eliminating all forms of discrimination and inequality between men and women.

344. An agreement has been signed with the NGO Action for Children for the development of activities through a project and a programme, along the following lines:

i) Project on work, education and health for working children and young persons (TES project). The aim of this project is to institutionalize and spread an education plan to promote educational experiments in order to diversify curricula and assist schools by involving the educational community in the development of activities aimed at promoting and defending the rights of working children and young persons.

ii) National school municipalities programme. This programme is intended to encourage educational centres to adopt methods of organization and democratic participation which initiate learners to the exercise of their citizenship rights and obligations. It encourages school principals, teachers, heads of household and school children in

general to develop activities aimed at the well-being of school children and their active participation and at promoting and defending their rights, and preparing them to assume their responsibilities.

e) Actions at multisectoral level

345. The National Plan of Action for children and young persons 2002-2010 constitutes the framework document for actions, programmes and strategies to be adopted and implemented by the various sectors and institutions of the State and civil society in order to ensure the full application of the human rights of Peruvian children and young persons. The Ministry of Education, through the DINEIP, has launched many actions under the plan in pursuit of the following objectives:

i) To ensure that all children remain in and complete primary education in good time; the aim in this respect is:

- To identify teaching activities promoted by schools which succeed in retaining the children of underprivileged sectors in primary school.

- To find ways of spreading awareness and a sense of responsibility among local communities to encourage timely enrolment and regular and full attendance, as well as to involve parents in the teaching methods of primary education.

- To identify schools that show efficient management of teaching activities, especially in cases where external factors are unfavourable. The aim is to recognize, describe and disseminate variables and factors which have a favourable or unfavourable effect on performance.

ii) To encourage access to primary education for excluded children by:

- Designing and validating the necessary changes in curricula to ensure that these respond adequately to cross-cutting objectives of inter-cultural contacts, bilingualism and equity, and that they are appropriate for working with new methods for multi-grade classrooms.

- Facilitating learning processes by introducing subjects based on the new teaching methods.

iii) To improve the quality of primary education by promoting a comprehensive approach that ensures that children develop social skills and attitudes, as well as a mastery of reading, writing, speaking, logical thought and elementary arithmetic, on the basis of:

- Revising and updating existing teaching methods by monitoring the application of curricula in schools; by facilitating supervision and exchanges with technical teaching teams of regional directorates; and by consulting experts, institutions and civil society with regard to teaching methods.

- Improving the processes of learning and teaching through the timely provision of educational material to children and to teachers in the public educational establishments of primary education.

- Validating and organizing a set of activities with specific objectives aimed at involving different actors in the community, teachers, parents and students, with a view to strengthening reading, writing and counting skills.

ARTICLE 11

346. With regard to the treatment of persons held in custody, Act No. 27238, the framework law governing the Peruvian National Police of 21 December 1999 (annex 25), in its article 10 incorporated the provisions of the Code of Conduct for Law Enforcement Officials. That international instrument, amongst other aspects, establishes that in the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons. It establishes also that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor invoke superior orders or special circumstances, such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification for such acts.

347. In this respect, Act No. 28338, governing the disciplinary code of the Peruvian National Police, published on 17 August 2004 (annex 27), lays down rules for controlling excesses of which some police officials may be guilty in the performance of their duties.[88] Sections 37.3.20 and 37.3.21 of the Act consider that "inflicting, instigating or tolerating acts of torture or inhuman or degrading acts" and "performing police duties with an unnecessary of disproportionate use of force, by any means, such as may lead to serious injuries or death" amount to very serious offences. Section 37.2.33 also considers as a serious offence the act of "physically ill-treating members of the public or detainees, in the performance of police duties, whenever such an act does not constitute a very serious offence".[89] In this respect, it is doubtful whether "acts of torture or inhuman or degrading acts" may be investigated by National Police inspectorates in view of their criminal character.[90]

348. One of the mechanisms that ensures protection of the fundamental rights of detainees is the role assigned to the Public Prosecutor in the preliminary investigation of an offence. Thus article 10 of the framework law governing that office establishes that as soon as the provincial criminal prosecutor is informed that the police have arrested a person charged with committing an offence he shall establish contact, either personally or through his deputy or duly authorized assistant, with the detainee in order to ensure that the latter's defence and other rights are protected, as established in the Constitution and in the law. In this way, according to the rule, the Public Prosecutor must monitor and intervene in the investigation of an offence as soon as the police is involved. A further part of his duties is to visit prison establishments and pre-trial

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[88] One important aspect of Act No. 28338 is that it establishes unambiguously in article 32 that subordinates are not obliged to obey orders that lead to transgressions of human rights or the perpetration of official misconduct or an administrative disciplinary offence.

[89] In these cases, according to the range of penalties provided by the Act governing the disciplinary code of the PNP, the penalty provided for the above-mentioned offences is mandatory retirement in the case of sections 37.3.20 and 37.3.21 and 12 days of suspension in the case of offences referred to in section 37.2.33.

[90] In any case, it would have been preferable for the Act governing the disciplinary code of the PNP to envisage the possibility that as soon as control bodies come across signs that an offence has been committed, they should suspend the course of the administrative disciplinary investigation and refer proceedings to the courts.

detention centres to receive complaints from accused and convicted detainees concerning their judicial situation or their constitutional rights.

349. Although these powers cannot be fully exercised owing to the limited number of prosecutors available,[91] it is worth mentioning some of the efforts which have been made by that institution to ensure respect for the fundamental rights of persons in custody, such as the approval in Decision No. 471-99-CEMP of 18 June 1999 of Circular No. 001-99-MP-CEMP concerning the rules which must be observed by prosecutors in order to guarantee the protection of the fundamental rights of persons in custody held in police premises, the scope of which was extended by Decision No. 628-2000-MP-CEMP of 12 September 2000.

350. Lastly, another of the supervisory mechanisms is the intervention of the Ombudsman's Office as an independent constitutional body responsible for defending the constitutional and fundamental rights of the individual and the community and for supervising the fulfilment of duties by the State administration. Under these terms of reference, the Ombudsman carries out visits to police premises, military installations and prison establishments in order to prevent any situations arising that might affect fundamental rights.[92]

351. With regard to provisions governing the custody and treatment of persons subjected to any form of detention, custody or imprisonment within the territory of the State, in order to avoid any possibility of torture, as explained above, the present Government's policy is one of unrestricted observance of human rights.

352. The administration is currently managed on the basis of the fundamental principles of authority and the unrestricted observance of human rights. The National Penitentiary Institute (INPE) has expressed its determination to adopt an inflexible attitude to whatever torture or ill-treatment is inflicted by prison officials on persons held in custody. In addition to its regular monitoring systems, the INPE has strengthened other parallel supervisory mechanisms, such as the opening up of prisons to humanitarian and human rights organizations like the International Committee of the Red Cross, the Office of the Ombudsman and church representatives.

353. A seminar was held on the prevention of torture and ill-treatment in the town of Chiclayo, on 4, 5 and 6 October of this year. It was intended for directors, subdirectors and the handling and security chiefs of 20 prison establishments of the northern region, as well as for eight security directors of regional INPE directorates. A cooperation agreement is to be signed in the near future with the Human Rights Commission (COMISEDH) in order to organize human rights training courses for INPE personnel.

354. The practice of transferring prisoners indiscriminately as a form of punishment has been eliminated by the INPE. Nowadays transfers are made only as a last resort and for reasons of

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[91] The Ombudsman's Office has found that the presence of prosecutors in police premises is limited, that is, during the preliminary investigation of an offence by the National Police, which should be supervised by the Public Prosecutor's Office. These deficiencies are not covered by assistant prosecutors or by the pool of prosecutors that exist in some judicial districts, owing to the limited numbers available compared with the range of duties to which the Public Prosecutor's Office is committed.

[92] Note No. DP/ADDHH-2004-203 of 21 September 2004 transmitted by the Assistant Ombudsman for Human Rights and Disabled Persons to the Executive Secretary of the National Human Rights Council of the Ministry of Justice.

prison security. They are implemented, moreover, in accordance with the rules contained in the Regulations of the Code of Penal Enforcement.

ARTICLES 12 TO 15

355. The answers given in the preceding pages contain updated information concerning effective measures adopted by the Peruvian State in response to its obligation to proceed to prompt and impartial investigations, to ensure that complaints by prisoners are impartially examined, that complainants and witnesses are protected against all intimidation, and that victims have the right to fair and adequate compensation. Also statements obtained as a result of torture are to be considered without effect. In order to avoid repetition, the State would refer to information given in the early pages of this report.

ARTICLE 16

356. With regard to the definition of cruel, inhuman or degrading treatment:

> "The TRC, following the jurisprudence of the European Court of Human Rights and the work of the Guatemalan Historical Truth Commission (CEH), understands cruel, inhuman or degrading treatment or punishment to be any practices aimed at awakening in a victim feelings of fear, anguish and inferiority in addition to humiliation and degradation for the purpose of obtaining information, as a means of intimidation, as punishment, as a preventive measure, in order to intimidate or coerce that person or others, as a punishment or for whatever reason based on any type of discrimination or other purpose. Such acts may not necessarily cause severe physical or mental pain such as that resulting from actual torture and they include both physical assaults as well as the act of obliging a person to commit acts which transgress major social or moral rules."[93]

[93] Final report of the TRC, Tome VI, Chapter 1, subchapter on "Torture and other cruel, inhuman or degrading treatment", Conclusion 1, pg. 214. Available on http://www.cverdad.org.pe/ifinal/, page revised on 9 November 2004.

List of annexes*

1. Defence Report No. 42 – The right to life and personal integrity
2. Regulations governing the evaluation and approval of judges and prosecutors. National Council of the Judiciary resolution No. 043-2000-CNM.
3. Act No. 27368 amending and re-establishing articles of the Organic Law of the National Council of the Judiciary and regulating the national competition for magistrates of the judiciary and the Public Prosecutor's Office.
4. National Council of the Judiciary table, judges, provisional appointments according to level.
5. National Council of the Judiciary table, prosecutors, provisional appointments according to level.
6. Judgment of the Constitutional Court, Order No. 1941 of 27 January 2003 in the Luis Felipe Almenara Bryson case
7. Judgment of the Constitutional Court, Order No. 2209 of 13 May 2003 in the Mario Antonio Urrelo Álvarez case.
8. Judgment of the Constitutional Court, Order No. 010-2002-AI-TC Lima in the Marcelino Tineo Silva case.
9. Legislative Decree No. 922 regulating in accordance with the judgment of the Constitutional Court the annulment of all treason trials and establishing rules on the applicable penal procedure. Order No. 010-2002-AI/TC.
10. Code of Penal Procedure, Legislative Decree No. 957 published on 29 July 2004.
11. Judgment of the Constitutional Court, Order No. 0017-2003-AI/TC, Office of the Ombudsman.
12. Legislative Decree No. 921 of 17 January 2003 establishing the legal regime of life imprisonment in Peruvian legislation and the maximum limits of sentences for offences referred to in article 2, 3b) and c), 4, 5 and 9 of Decree law No. 25475.
13. Supreme Decree No. 015-2003-JUS, Regulation governing the Code of Enforcement of Penalties.
14. Decision No. 631-2002-MP-FN creating the Prosecutor's Office specialized in forces disappearances, extrajudicial executions and exhumation of clandestine graves, with national jurisdiction.
15. Administrative Decision No. 170-2004-CE-PJ attributing competence to the National Penal Division to judge crimes against humanity and common offences constituting human rights violations and related offences.
16. Supreme Decision No. 246-2002-RE. Notes of 8 July 2002 and 28 October 2002 recognizing the competence of the Committee against Torture

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* These annexes are available for consultation in the records of the secretariat of the Committee against Torture.

17. Ad Hoc Procurator's Office: Trials: Anti-corruption and human rights.

18. Defence Report No. 86 – Review of cases submitted by the Truth and Reconciliation Committee.

19. Note No. 168-2004-MP-FN-1 F.S.C.L.DD.HH.

20. Judgment of the Constitutional Court, Order No. 0023-2003-AT-TC, Office of the Ombudsman.

21. Code of Constitutional Procedure, Act No. 28237

22. Supreme Decree No. 024-2001-JUS approving the Regulations of the Maximum Security Detention Centre of the Naval Base of Callao.

23. Supreme Decree No. 013-2004-JUS of 6 November 2004 regulating the system of visits to high-risk, accused or convicted detainees held at the Maximum Security Detention Centre of the Naval Base of Callao.

24. Presentation of the Legislative Bill to align penal legislation with the Statute of Rome of the International Criminal Court.

25. Decision on Joint Command of the Armed Forces No. 036-CCFFAA/CDIHFFAA of 19 February 2003.

26. Act No. 27238, Organic Law of the Peruvian National Police of 21 December 1999.

27. Act No. 28338 governing the Disciplinary Code of the Peruvian National Police of 23 August 2004.