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QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY
FORM OF DETENTION OR IMPRISONMENT, IN PARTICULAR:

QUESTION OF ENFORCED OR INVOLUNTARY DISAPPEARANCES

Report of the Working Group on Enforced or
Involuntary Disappearances

Addendum

Report on a second visit to Peru by two members of the Working Group
on Enforced or Involuntary Disappearances (3-10 October 1986)

I. INTRODUCTION

1. In June 1985, two members of the Working Group, Mr. Toine van Dongen and Mr. Luis Varela Quirós, visited Peru in response to an invitation addressed to the Group by the Government of President Fernando Belaúnde Terry to send a mission to Peru. The Government of President Alan García Pérez, which assumed power on 28 July 1985, extended a further invitation to the Working Group for a second visit to the country. Mr. van Dongen and Mr. Varela Quirós again represented the Working Group on that visit, which took place from 3 to 10 October 1986.

2. The two members of the Working Group again received ample co-operation from the Government of Peru in the conduct of the visit and were able freely to meet all witnesses, relatives of missing persons and other private sources they wished to hear. They were received on behalf of the Government by the Ministers for Foreign Affairs, Justice and the Interior, the President of the Senate and members of the human rights commissions of both houses of the Peruvian parliament, the Attorney-General (Fiscal de la Nación), the Joint Command of the Armed Forces, the Acting Political-Military Commander in Ayacucho and members of parliament and officials of the Executive and the Judiciary, in both Lima and Ayacucho. The members of the mission heard many relatives of missing persons, as well as representatives of organizations dealing with human rights in general. They also met dignitaries of the Roman Catholic Church and its Episcopal Social Action Committee (CEAS), academic staff of the University of Huamanga (Ayacucho) and representatives of the bar and the media. The members again paid a one-day visit to Ayacucho. They were not permitted to visit military compounds.

3. The present report updates the report on the Group's first visit to Peru (E/CN.4/1986/18/Add.1) and should be read in conjunction with it. The present report relates the developments which have occurred since President García Pérez took office as they were conveyed to the members of the mission. Where appropriate, reference is made to the relevant paragraphs in the previous report.

II. LEGAL AND INSTITUTIONAL FRAMEWORK

Institutional measures taken by the present Government

4. In his inaugural address on 28 July 1985, President Alan García Pérez announced the establishment of a peace commission whose objectives would include seeking means of persuading those who resorted to terrorist violence to return to democracy. The Peace Commission was established by Supreme Decision No. 221-85-JUS of 14 September 1985 as an advisory and consultative organ of the Office of the President of the Republic and was composed of six members, drawn from various sectors concerned with human rights. Its responsibilities included "transmitting to the public authorities and bringing to their attention any reports that have been or may be submitted on violations of human rights through murder, extrajudicial execution, disappearance of persons, torture or abuse of authority", and "advising the President of the Republic on such matters as he may raise concerning the problem of subversion and the enjoyment of human rights".

5. On 21 January 1986, the Peace Commission submitted to the President a report which contained the following proposals on the question of disappearances: in relation to disappearances prior to 28 July 1985, the investigation of reports received by the Office of the Attorney-General should be pursued through that Office and the competent judicial authorities and by means of the establishment of an investigatory commission, possibly parliamentary; in relation to disappearances since 28 July 1985, clear and forthright presidential guidelines should be issued to ensure that disappearances would not be used as a means to combat subversion and that energetic action would be taken, by legal means, if they occurred.

6. In view of certain problems of competence with regard to other authorities and the lack of an adequate infrastructure, five members of the Peace Commission offered their resignation, which was accepted by the President, when the above-mentioned report was submitted. Subsequently a new Peace Commission was established, but its three members, two of whom had been members of the previous Commission, also resigned. Their resignation was accepted by Supreme Decision No. 265-86-JUS of 6 September 1986.

7. By Supreme Decree No. 012-86 JUS of 6 September 1986, the President established the National Council on Human Rights within the Ministry of Justice, composed of one representative each from the Ministries of Education, Foreign Affairs, the Interior and Justice, one representative each from the Catholic Church, the Peruvian universities and the National Federation of Bar Associations, and one from the various private human rights organizations.* The chief responsibilities of the Council are to inform and advise the Executive, so as to enable it to play a preventive role in the protection of human rights in the areas within its competence, and to increase public awareness of respect for the human rights guaranteed under Peruvian legislation.

Measures taken by the Office of the Attorney-General (Ministerio Público)

8. On 25 July 1985, the Attorney-General (Fiscal de la Nación) ordered the establishment of a Human Rights Office (Oficina General de Derechos Humanos) within the Office of the Attorney-General, as an administrative body responsible for assisting the Office of the Attorney-General in channelling and following up reports on presumed violations of human rights, and co-ordinating with national and international human rights organizations. This Office receives and collects reports and information on enforced or involuntary disappearances and acts as a centralizing and co-ordinating mechanism for the activities and briefing of various organizations and authorities which may be instrumental in clarifying the fate of missing persons. Its main sources of information are the public prosecutors (fiscales) operating in the areas in which persons are alleged to have disappeared, but it also receives reports from relatives of missing persons and human rights organizations and requests information from the competent military, police or other authorities. It uses computerized techniques and has a branch in the city of Ayacucho; provision is made for the possibility of establishing other local branches, in so far as resources permit.

* The human rights organizations nominated their representative at a later date; he was officially appointed on 2 December 1986.

The state of emergency

9. In October 1986, a state of emergency was in force in 24 provinces of six departments: eight provinces in the Department of Ayacucho, seven in the Department of Huancavelica, one in the Department of Apurímac, four in the Department of Huánuco, two in the Department of Pasco and two in the Department of Lima, including the capital itself. The Minister of Justice affirmed that Act No. 24150, which establishes the rules to be complied with in states of emergency or siege when the armed forces have been directed to assume control of the internal order, was still in force. For a detailed description of the legislation on the state of emergency see E/CN.4/1986/18/Add.1, paragraphs 28-34. For observations on Act No. 24150 see paragraphs 16-18.

Habeas corpus

10. During their visit to Peru in 1985, the two members of the Working Group noticed that the relatives of missing persons had applied for habeas corpus in very few cases, even though that remedy continued to be available during the state of emergency in respect of the rights and guarantees that had not been suspended (see E/CN.4/1986/18/Add.1, paras. 25, 31 and 55). The members of the Working Group were, therefore, interested in learning about the use and effectiveness of habeas corpus for protection against disappearances during the period covered by this report. Since the admissibility of habeas corpus has been interpreted in various ways in conversations with officials, lawyers and members of the judiciary, the Group considers it useful to describe the pertinent legal provisions relating to habeas corpus proceedings in a state of emergency. Article 38 of Act No. 23506 states: "Habeas corpus and amparo proceedings in respect of the guarantees and rights specifically indicated in article 231 of the Constitution shall not be admissible during the period when they are suspended". In accordance with the Constitution, the President of the Republic may suspend certain constitutional guarantees during a state of emergency (see E/CN.4/1986/18/Add.1, para. 29) and he has done so with regard to the following rights (guaranteed in article 2 of the Constitution) in most provinces under a state of emergency: the right to inviolability of the home; the right freely to choose one's place of residence and to travel within, enter and leave the country; the right of assembly; and the right not to be arrested without a judicial warrant. Thus, although a person may be arrested without a warrant from a judge, other guarantees in article 2 of the Constitution relating to personal freedom and security are not suspended, such as the right to be informed of the reasons for one's arrest and to be assisted by a lawyer, the right not to be held incommunicado, and the right not to be subjected to torture or mistreatment.

11. The Minister of Justice confirmed that habeas corpus could only be invoked concerning those rights which were not suspended under a state of emergency. The Attorney-General (Fiscal de la Nación), on the other hand, whose second function incidentally is that of defensor del pueblo, stated that people in the emergency zone could not avail themselves of habeas corpus at all since the corresponding constitutional guarantees had been suspended.

12. The President of the Superior Court of Ayacucho, where most writs of habeas corpus were filed, confirmed that the Court had decided on their admissibility in principle. Nevertheless, according to copies of judicial decisions received, habeas corpus has in other instances been dismissed by judges on the ground of the suspension of constitutional guarantees, with no consideration for allegations that the persons in question were being held incommunicado, that they had been unable to obtain the assistance of a defence counsel or that their physical integrity had not been respected. In one such decision, the court held that, in accordance with article 38 of Act No. 23506, "it is not necessary to form an opinion on the substance of the remedy because a state of emergency has been declared in the province". In a number of judicial decisions, the application for habeas corpus has been rejected on the ground that suspension of the right not to be arrested without a warrant also set aside the prohibition of incommunicado detention. Other court decisions handed down on habeas corpus proceedings have, however, argued differently. There are, moreover, decisions in which the validity of habeas corpus proceedings to safeguard the above-mentioned rights is implicitly recognized, including one by the Supreme Court of Justice.

13. In June 1986, a number of non-governmental organizations, together with the University of Huamanga and members of the Ayacucho Judiciary, organized a forum for judges, lawyers, students and the public at large on the legal and practical aspects of habeas corpus. Over 250 persons participated in the meeting held in Ayacucho.

III. REPORTS ON DISAPPEARANCES RECEIVED FROM NON-GOVERNMENTAL SOURCES AND STEPS TAKEN BY THE RELATIVES OF MISSING PERSONS BEFORE THE AUTHORITIES

General observations by persons and organizations concerned with human rights and by relatives of missing persons

14. In many interviews concern was expressed that, although cases of disappearances had declined in number, violence had persisted and spread beyond the Department of Ayacucho to other departments such as Huancavelica, Huánuco, Apurímac, Puno and Cerro de Pasco. It was generally alleged that both Sendero Luminoso (see E/CN.4/1986/18/Add.1, paras. 6-21) and the armed forces were responsible for disappearances and attention was drawn to the fact that the latter's periodic communiqués reported numerous clashes with terrorists, in which there were heavy death tolls, but made no reference to any prisoners taken in those clashes. According to a report by the data bank of the Peruvian Centre for Development Studies and Promotion (Centro de Estudios y Promoción del Desarrollo (DESCO)), in only six months (January-July 1986) 1,069 persons had died as a result of political violence. Many victims of violence allegedly committed by either subversive groups or governmental forces were leaders of trade unions or rural organizations and/or members of recognized political parties.

15. Several sources stated that, if the anti-subversive methods used in Ayacucho were applied in other departments with a more sophisticated social structure, the consequences might be much more serious than those experienced so far (this danger was also admitted by the Minister of the Interior). Some witnesses from regions more affluent than Ayacucho asserted that violence was frequently accompanied by corruption:

the release of innocent persons could be secured only on payment of a ransom, and prosecutors and lawyers charged substantial fees for accepting complaints and processing judicial documents, such as writs of habeas corpus, etc.

16. The relatives and other persons interviewed, particularly in Ayacucho, also expressed concern about the dominance of military authority over civil authority in the areas under a state of emergency, the broad interpretation which Act No. 24150 and recent decisions of the Supreme Court had given to crimes committed by military personnel during the performance of their duties (which fell within military jurisdiction), restrictions on the powers of judges and public prosecutors in the emergency zones, and the complete ban on access to barracks or other military premises, which also extended to representatives of the Red Cross. However, it was noted with appreciation that, following recommendations made by the first Peace Commission, Red Cross representatives had recently been permitted to visit prisons under the control of the Ministry of Justice and the Ministry of the Interior situated within the emergency zones.

17. Various written documents and oral testimony received during the visit cast doubt on the constitutionality of the institution of a political-military command, which was first created by previous military governments but for which no provision was made in the Constitution. It was repeatedly emphasized that the emergency zone was thereby excluded from the guarantees afforded by the rule of law and in practice had become an area where individuals, already threatened by terrorist violence, had no protection against official arbitrary acts. It was also maintained that, while the Constitution empowered the President to assign responsibility for ensuring law and order during a state of emergency to the armed forces, it did not authorize the establishment of an independent authority, such as the Political-Military Command, with extremely far-reaching powers that went beyond specifically military and police functions (for example, the ability to call for the dismissal, appointment or transfer of political and administrative authorities as provided for in Act No. 24150). It was also emphasized that the Act laid down "rules that must be complied with in states of emergency under which the armed forces assume control of law and order", which meant that its provisions automatically applied in such situations, whereas the Constitution did not authorize the President to waive his powers or those of the political authorities under him or to restrict the independence of the Judiciary or the Office of the Attorney-General.

18. Particular concern was expressed over the provisions of article 10 of the Act which, referring to members of the armed forces or the police and all those subject to the Code of Military Justice serving in zones declared to be under a state of emergency, stipulates: "Offences defined in the Code of Military Justice and committed in the course of duty are exclusively within the competence of the military courts, save offences which are unrelated to the service". According to reports received, this provision has served as the basis for Supreme Court rulings in favour of the military courts in cases of conflict of jurisdiction. One example mentioned was a decision in which the Supreme Court settled a conflict of jurisdiction in favour of the military courts in a case of aggravated homicide, although the Code of Military Justice does not cover the offence of homicide, which is classified as such only in the Penal Code. The members of the Working

Group were informed of parliamentary moves to amend article 10 of Act No. 24150, to define more precisely the so-called "delito de función" (offence committed in the course of duty) and to legislate for offences not yet considered as such by Peruvian law, such as the crimes of genocide, torture and enforced or involuntary disappearance.

19. It was recognized that under the present Government positive measures had been taken, such as the unprecedented initiation of investigations against certain military officers for offences relating to violations of human rights. In this context, the dismissal of a number of generals in connection with the massacres of Accomarca and Pucayaco* (see para. 30) and the reorganization of the police forces, which led to the dismissal of a significant number of officers (see para. 34), was mentioned.

20. Human rights organizations expressed the view that, in general, the parliament had failed to monitor the Government's anti-subversion policy and had therefore not taken the necessary action to prevent the practice of enforced or involuntary disappearances. The members were also informed that two bills, under which enforced or involuntary disappearances would be included in the penal legislation, had been presented to the Senate in August and September 1985. As for the newly created National Council on Human Rights (see para. 7), several persons and organizations stated that the inclusion of a representative of the armed forces on the Council would have enhanced its significance and effectiveness.

Steps taken by the relatives of missing persons before the authorities

21. As stated in the previous report (see E/CN.4/1986/18/Add.1, paras. 53-61), the relatives of missing persons usually report disappearances to several different authorities, but in most cases they address themselves to the Office of the Attorney-General, a practice which has not changed since the Group's first visit. According to relatives and organizations, the Human Rights Office within the Office of the Attorney-General had been instrumental in drawing up a systematic list of cases, but had not been very effective in ensuring that the relevant investigations were pursued more vigorously. While it was understood that public prosecutors lacked resources and were not supported by the military authorities, the view was reiterated that they were not fully exploiting all the means that lay within their powers as established by law. It was symptomatic that, of some 2,500 reports of enforced or involuntary disappearances registered with the Human Rights Office, only two had been investigated by the courts. The sources

* By note verbale dated 17 September 1985, the Permanent Representative of Peru to the United Nations Office at Geneva transmitted a press release issued by the Presidency of the Republic, stating that, upon the discovery of seven bodies in a common grave in the area of Pucayacu, the President had ordered an exhaustive investigation. In a further communiqué issued by the Joint Command of the Peruvian Armed Forces, transmitted by the Permanent Representative on 20 September 1985, it was stated that the Inspectorate of the Second Infantry Division had established that Second Lieutenant Telmo Hurtado, a junior officer commanding a patrol, was responsible for the death of approximately 40 civilians (69 according to the Presidential press release) in the Accomarca area on 14 August 1985.

in question nevertheless recognized that some prosecutors had taken courageous initiatives despite the difficulties they faced in their work, such as lack of support from their superiors, and that their efforts were often thwarted by the highest judicial authorities.

22. Several human rights organizations and jurists pointed out that, during the past year, habeas corpus had been resorted to much more frequently. However, most judges had been reluctant to deal with such applications and had not properly discharged their obligation to investigate the reported facts thoroughly, frequently maintaining that the military authorities had refused them permission to visit barracks or other military establishments where missing persons were reported to be detained. Many judges were formally complying with initial habeas corpus procedures by requesting information from the competent military authorities and then declaring applications unfounded, solely on the strength of a written reply from the military authorities stating that the person in question was not in detention. The members of the mission received several documents corroborating these assertions.

23. To illustrate the situation reference was made to a statement by the chairman of the commission which drew up the bill on habeas corpus (preface to Alberto Borea Odría's El Amparo y el Habeas Corpus en el Peru de Hoy):

"The favourable disposition of the law remains, but as far as judicial decisions are concerned the law has undoubtedly suffered set-backs. Firstly, it was a mistake to expect much of the judges, because in our country, especially in the lower courts, they have no constitutional training and are still less in the habit of confronting public authorities".

Reports of enforced or involuntary disappearances transmitted to the Government of Peru

24. The Working Group transmitted to the Government of Peru 163 cases of enforced or involuntary disappearances which had occurred between August 1985 and November 1986, not counting 115 cases which were reported to have occurred in El Frontón prison. Most of the disappearances were reported to have occurred in Ayacucho. Two had occurred in the Department of Cuzco, 2 in the Department of Huánaco, 10 in Huancavelica, 19 in Cerro de Pasco, 4 in Puno and 1 in Lima. Of these cases, 21 were subsequently clarified by the Government and 54 by the sources, who reported, in most cases that the person in question had been released. When the source provided the clarification, it was generally stated that the person concerned had been detained in a military barracks or on security services premises and that his detention had not been officially acknowledged. In some of these cases, it was alleged that the person had been tortured during detention and, in one case, that he had had to be taken to hospital because of injuries received during torture.

25. The figures provided by the Human Rights Office of the Office of the Attorney-General indicate that, between July 1985 and September 1986, 276 disappearances were reported, but more than half of them were subsequently clarified. All the sources consulted agreed that the number of disappearances had declined considerably in 1986. It was nevertheless

emphasized that, although there were fewer cases, the structures that permitted disappearances to occur remained intact, and the number of persons released after having been held in unacknowledged detention was still considerable.

26. The present report does not give a description of the type and contents of the complaints received, as they reflect patterns similar to those described in the previous report (see E/CN.4/1986/18/Add.1, paras. 37-52). In a letter addressed by relatives to the President of the Republic, the main characteristics of disappearances, as given in the report on the Working Group's first visit, were reiterated and emphasis was placed on the fact that members of the armed and/or police forces frequently arrested persons in the presence of witnesses and were recognized by their uniforms, vehicles, speech, behaviour or weapons, which they made no effort to conceal. Their precise identification was hardly ever possible, however, since they frequently wore balaclavas and uniforms without distinctive indications of branch or rank, and used pseudonyms. The persons arrested were normally taken to the nearest barracks, such as "Los Cabitos" in Ayacucho, the barracks of Cangallo and Castropampa or Luisiana Base in the Province of La Mar.

27. A witness stated that he had been held for one month in various military barracks where he had been interrogated, allegedly under torture, and where he had met other persons who were still missing. Several written testimonies received indicate that persons have been detained in military premises for extended periods ranging from one week to three months. Other witnesses submitted photocopies of communications addressed by police and armed forces to local prosecutors containing contradictory information, the armed forces denying any arrest and the police acknowledging that the person in question had been handed over to them by the armed forces and had subsequently been released. Selected documents provided by the Human Rights Office, containing communications from the military authorities, refer inter alia to the case of eight persons (names provided to the Working Group) who were detained on 29 March 1986 and released by the armed forces 10 days later, thus contradicting the assertion that the armed forces never detained persons for any length of time (see para. 36).

28. Attention should also be drawn to the case of 115 persons detained in the prison on El Frontón island who participated in a riot and subsequently disappeared. The writ of habeas corpus filed on behalf of these detainees states that, on 18 June 1986, 153 prisoners charged with terrorism caused a riot in El Frontón prison at the same time as other riots in other Peruvian prisons. The Government delegated responsibility for restoring order to the Joint Command of the Armed Forces and the Navy was ordered to intervene directly at El Frontón prison. Following the action taken by the Navy, only 34 of the detainees were recorded as having survived. The Joint Command of the Armed Forces simply reported that the other detainees were "possibly dead", without indicating where they had been buried and without handing over their bodies to relatives who asked for them. In one of the habeas corpus applications it is stated that one of the missing persons was seen approximately one month later in the offices of the Anti-Terrorism Department (DIRCOTE) of the Peruvian Investigatory Police. According to information contained in judicial dossiers, another three missing persons were detained at least until 14 July in El Frontón and Canto Grande prisons, from which they then disappeared. The relatives stated that they had found only four bodies buried in unmarked graves.

29. The relatives of missing persons interviewed in Lima and Ayacucho repeatedly complained about the lack of official response to their requests for clarification of the fate of missing persons. They handed the members of the mission the text of a letter to the President, asking inter alia for the establishment of an ad hoc commission to investigate the question of missing persons.

IV. POSITION OF THE GOVERNMENT AND INFORMATION PROVIDED BY OFFICIAL SOURCES

30. The policy pursued by the new Government to enhance respect for human rights while pursuing the fight against terrorism was explained to the members of the Working Group by the Minister for Foreign Affairs, Mr. Allan Wagner, the Minister of Justice, Mr. Carlos Blancas, and the Minister of the Interior, Mr. Abel Salinas. The Minister for Foreign Affairs emphasized the firm position the Government was taking against excesses committed by the armed forces and its enforcement of observance of human rights in military operations. Moreover, the Government had clearly demonstrated that abuses were punished and had in fact dismissed high-ranking officers of the armed forces in connection with the massacres of Accomarca and Pucayaco (see note to para. 19). However, the problem had broader ramifications and the Government was determined to deal with it by strengthening the Judiciary and other civil authorities and by tackling the economic and social root causes. A complicating factor was that, since the Working Group's last visit, terrorism had spread to the cities and to the Departments of Puno and Cerro de Pasco.

31. Co-ordination between the armed forces and the Government in the framework of the National Defence Council had been intensified and the President himself had clearly established his authority over the Joint Command of the Armed Forces. As far as the question of military jurisdiction was concerned, the Minister for Foreign Affairs considered useful the current legislative efforts aimed at a clear distinction between common crimes and offences committed in the line of duty. Given the strict control over the armed forces and the interest of public opinion in some well-known pending cases, the military jurisdiction would have to give proof of its effectiveness.

32. The Minister of Justice, who was instrumental in the creation of the Human Rights Council, stressed the usefulness of, and the need for, new institutions to promote and enhance respect for human rights. He mentioned, inter alia, that the Office of the Attorney-General (Fiscal de la Nación), although construed as both public prosecutor and ombudsman (defensor del pueblo), had in reality given less attention to the latter function. He therefore felt that a genuine defensor del pueblo was required. New laws regulating the power of the judiciary, elaborated in close consultation with foreign experts, would soon be promulgated. Easy access to the administration of justice was another major concern of the Government and public offices providing legal advice (consultorios jurídicos) would soon be established in all parts of the country.

33. The Minister admitted that there were problems regarding the registration of inmates in detention centres. However, efforts were being made to improve the registration system and a census of detainees was periodically being carried out. He denied that detention centres existed outside the competence of the Ministry of Justice, but referred to the special authority given to the security forces in the Anti-Terrorist Law of March 1981 (see E/CN.4/1986/18/Add.1, para. 32), which enabled them to place persons suspected of terrorism under preventive detention for 15 days, a measure which could, of course, be applied by the armed forces in military compounds as well. However, the judge and the public prosecutor had to be notified of an arrest within 24 hours and both were authorized to visit the detainee, though judges and prosecutors had admittedly faced restrictions in fulfilling their duties in that respect. He also felt that a better legal definition of offences committed on official duty would be useful and confirmed that Act No. 24150 (see paras. 9, 16-19, and E/CN.4/1986/18/Add.1, para. 34) was still in force.

34. The Minister of the Interior expressed the view that the armed forces were less qualified than the police to combat internal terrorist violence, as the latter had much closer contact with, and a better understanding of the problems of, the population in the affected areas, both of which were essential for a successful fight against subversion. Therefore, calls for a state of emergency under military control in the Department of Puno had not been acceded to, but the police forces in that Department had been reinforced. He, too, stressed that the Government had clearly established what could be regarded as firmness vis-à-vis terrorists and what were considered excesses, and had not failed to punish the armed forces for violations of human rights. It could not be denied that abuses had also been committed by the police, but under the ongoing police reform, 1,400 officers and 1,800 subalterns had already been dismissed for a variety of reasons. There was no specific regular training of law enforcement officials in human rights, which would have little success unless accompanied by determined governmental efforts to overcome the social problems of the country. He wished to point out, however, that efforts were being made in that direction. With regard to authority over police forces in areas under a state of emergency, where the armed forces, by presidential decree, assumed control of the internal order, he confirmed that, in strictly legal terms, the police were placed under military command. There were, however, exceptions to that rule, depending on the area, for practical purposes. In Lima, for instance, the situation in that respect was different from that in Ayacucho. With regard to the reported disappearances, while recognizing that excesses had occurred, he expressed doubts about the veracity of certain allegations.

Information provided by the armed forces

35. The Chief of the Joint Command of the Armed Forces, General Monzón Arnuáteguay, stated that, at the time of the visit, the armed forces exercised effective control over 85 per cent of the Department of Ayacucho. However, in some provinces terrorist aggression continued and subversion had started to gain a foothold in other departments. It was, therefore, necessary to maintain the state of emergency. He also provided the members of the mission with a compilation of communications received from various local authorities, community leaders and organizations denouncing atrocities committed by terrorists and requesting protection by the armed and police forces, and in some instances calling for the declaration or extension of a

state of emergency. He expressed the view that it would be a gross distortion of facts not to hold Sendero Luminoso and other terrorist movements responsible for perpetrating serious human rights violations, including the reported disappearances. One explanation why disappearances were attributed to the armed forces could be that terrorists killed in encounters with military patrols frequently carried no documents on them and could therefore not be identified. Many allegations were simply false or deliberately intended to mislead the authorities and public opinion.

36. Both the Joint Command and the acting Political-Military Commander of National Security Sub-Zone No.5 (Ayacucho) reiterated that there were no prisons on military compounds and that any person arrested by the armed forces in areas under a state of emergency were handed to the Investigatory Police who in turn informed the relatives. Requests for information on missing persons were duly investigated and responses were provided to the public prosecutors (fiscales). The Chief of the Joint Command added that, when such requests were received from the Attorney-General, they were forwarded to the competent political-military commander who had them investigated by the police forces under his command, but in the majority of cases it had been found that the person had not been arrested by the military. The political-military commanders were obliged to refer to the Commander of the Second Central Security Zone (Segunda Zona de Seguridad del Centro) any reports on military operations (including arrests made) from the commanding officers of the subdivisions of the sub-zone (áreas and sectores) and he in turn reported to the Joint Command. Central registers on all arrests made were being maintained. All officers had to follow courses on constitutional law, in which they also studied the human rights legislation in force in Peru.

Information received from the Attorney-General, the Director-General of the Human Rights Office, public prosecutors and members of the Legislature and the Judiciary

37. The Attorney-General (Fiscal de la Nación) stressed that in 1986 allegations of disappearances had decreased and, since August 1985, more than half of the reported cases had been clarified. Together with the Director-General of the Human Rights Office he enabled the members of the mission to consult the computerized files containing the allegations received as well as the administrative follow-up given to them. Despite the progress made through the establishment of the Human Rights Office, he still faced considerable difficulties because of shortage of resources and lack of qualified candidates for vacant public prosecutor posts in areas where there were risks on account of violence. He did not have access to the central registers on arrests maintained by the military.

38. The Director-General of the Human Rights Office stated that disappearances reported to have occurred up to 1984 remained a major problem and emphasized the more co-operative attitude of the military authorities in answering requests for information on missing persons since autumn 1985. In general, a reply was given on every case but only 30 to 40 per cent of the replies contained an acknowledgment of detention. Detentions by the Investigatory Police (PIP) were automatically notified to the public prosecutors. The military authorities, however, would not allow public prosecutors to enter barracks and neither they nor the Human Rights Office were in a position to consult any records of arrest held by the armed forces which were the supreme authority in the areas under a state of emergency.

Allegations of disappearances could be received by any public prosecutor or by the Human Rights Office in Lima or its branch in Ayacucho, but the Head Office generally addressed requests for information on reported cases to the military authorities at all levels - Joint Command, the Command of the Second Central Security Zone and the Political-Military Command of the Sub-Zone. Once a detention was acknowledged the case would be followed up by a public prosecutor.

39. Several public prosecutors interviewed in Ayacucho confirmed that reports on disappearances had decreased and that in many cases replies from the military authorities were being received. Their difficulty started, however, when those replies did not contain an acknowledgment of detention. One of them stated that positive replies were only given when persons had been released or had been handed over to the investigatory police.

40. The meetings between the members of the mission and judges of the Superior Courts of Lima and Ayacucho focused on habeas corpus proceedings and provided an insight into their practical application. Judges were generally unable to proceed as they were not being permitted to visit army or police barracks. Such obstruction of the Judiciary was hardly ever further pursued by the public prosecutors. It was therefore felt that the habeas corpus procedure was totally inefficient in clarifying cases of disappearances. Another reason for the weakness of the Judiciary was the lack of material resources and the fact that almost all judges and public prosecutors were provisional appointees and that vacancies at the court had not been filled during the past three years. Judges in Ayacucho were frequently facing harrassment and threats and generally felt totally abandoned by the central Government.

41. In the course of the visit, the members of the mission were invited to meet the members of the human rights commissions of both chambers of the Peruvian Congress. They were also able to attend a plenary discussion of both commissions about human rights issues and about disappearances in particular, which provided valuable insight into the workings of the Peruvian democratic system. In the discussion differing views were expressed as to the competence of the commissions to deal with individual complaints on human rights violations. Some members of the commissions felt that their sole responsibility was to consider the human rights content of proposed legislation. Nevertheless, the members of the mission received several copies of complaints on disappearances addressed to the commissions and some senators and deputies stated that, although they did not believe that such matters fell within their competence, they accepted the complaints for humanitarian reasons.

V. CONCLUDING OBSERVATIONS

42. The Working Group is grateful to the Peruvian Government for providing an opportunity to review the progress made in combating the phenomenon of disappearances in Peru, following its first visit in June of 1985.

43. As already stated in last year's report, in assessing the situation of missing persons in Peru, the Working Group has to pay due regard to the overall context of violence in which disappearances have been reported to it. For, in both intellectual and practical terms, it is not feasible to divorce the issue of disappearances completely from related violations of human rights or from the socio-political processes that have engendered them. If it did so, the Group would not be exercising its mandate properly in the manner consistently supported over the years by the Commission on Human Rights.

44. Being faced with a terrorist movement such as Sendero Luminoso amidst a variety of urgent economic and social problems is not an enviable position for any government to be in. Terrorist violence rages unabated, without the least respect for life, limb or property. Worse still, although for a long time it was confined to some provinces of Ayacucho and neighbouring departments, insurgence has now spread to the Departments of Cerro de Pasco (north of Ayacucho) and of Cuzco and Puno (to the south) and the capital itself has become affected. In consequence, the area covered by the state of emergency has been extended.

45. Clearly, in its contacts with the Working Group, the previous Government was loath to admit that disappearances had indeed occurred in significant numbers and avoided apportioning responsibility for any excesses to the armed forces or the police. It was heartening, therefore, to note that the new President declared upon taking office that his administration would not fight "barbarism with barbarism". Indeed, that promise as well as concrete action bear witness to a firm resolve to call a halt to disappearances and other violations of human rights by government forces. Civil participation has been sought in finding long-term solutions for internal strife and in promoting the cause of human rights. Establishing the National Council for Human Rights is but one example. The present Government has also resolutely opened its doors to international scrutiny of Peru's human rights record. It has taken a much more co-operative attitude towards the Group, swiftly responding to cases transmitted to it and making immediate efforts to clarify them.

46. In parliament, interest for human rights seems to have increased markedly and this has led to the introduction of legislation designed to remedy lacunae in Peruvian human rights law.

47. One of the major concerns expressed in the previous report concerned the wide latitude granted by the central Government to the armed forces and the police to fight Sendero Luminoso and restore public order in the manner they saw fit. At the time it was argued that such latitude would almost inevitably lead sooner or later to disappearances and concomitant violations of human rights. It would seem that the present administration has made

great strides towards regaining control over the counter-insurgency strategy followed by the armed forces. Consequently, the incidence of disappearances has decreased considerably, particularly since the end of 1985. This is clear from the graph in the annex.

48 However, disappearances still continue to occur in Peru on an appreciable scale, and other forms of violence at the hands of government forces appear to have increased, particularly since the middle of 1986. The Working Group has transmitted to the Government some 160 cases that occurred in the emergency zone between August 1985 and November 1986. About half of these cases have subsequently been clarified: detention was acknowledged or subjects were turned over to the police by the armed forces or released. While this shows a welcome increase in the measure of responsiveness of the armed forces, it is also indicative of the practice of short-term disappearances as a method of counter-insurgency in breach of Peruvian law.

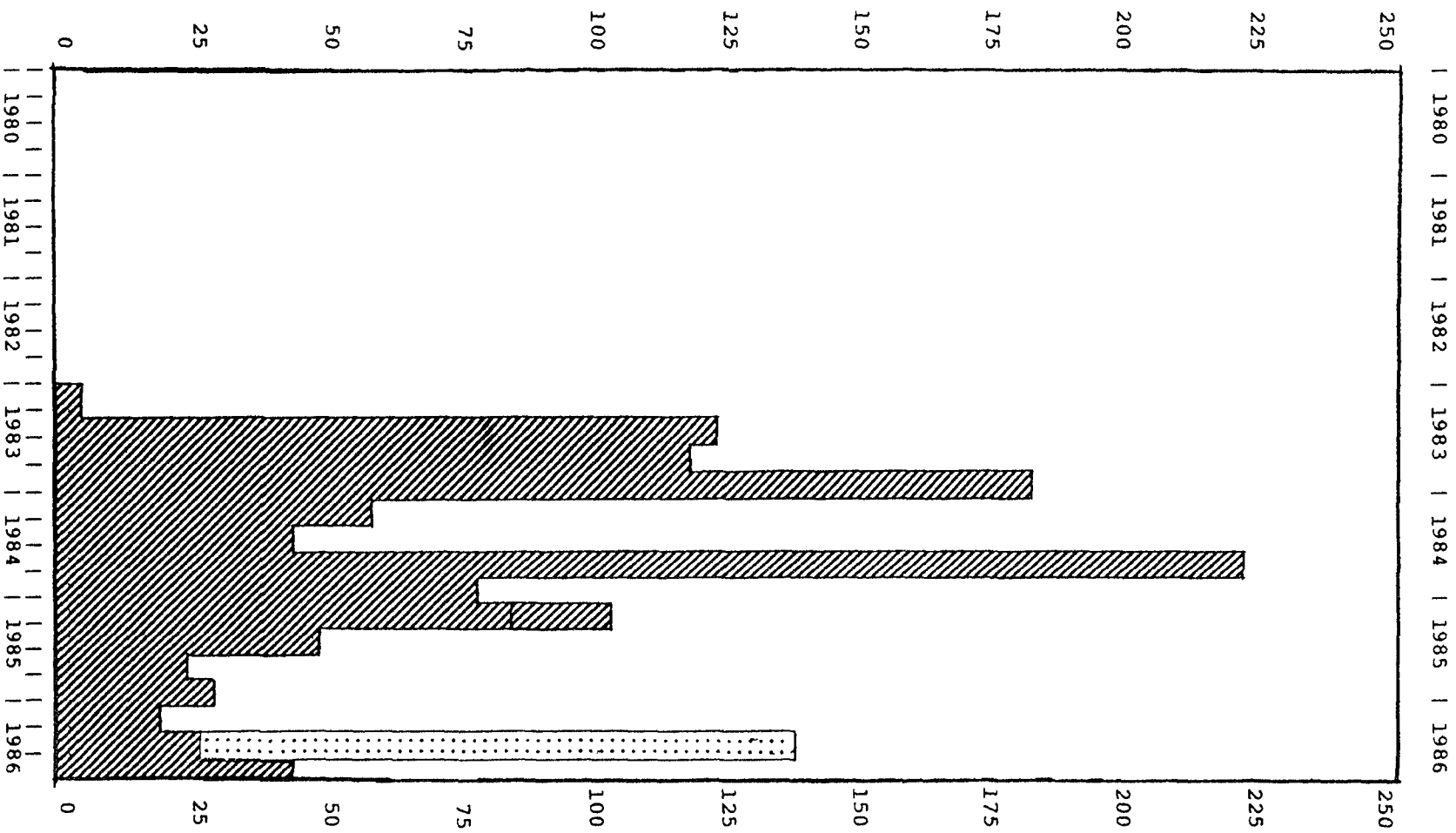
49. In last year's report attention was drawn to what was described as some sort of institutional paralysis pertaining to the protection of human rights in the emergency zone. Little progress can be reported in that regard. In the majority of cases prosecutors are still obstructed in their efforts to follow up on denunciations of disappearances. The Judiciary seems ill at ease with habeas corpus proceedings, which in any case meet with lack of co-operation from the respondents. Almost without exception civilian courts refer cases involving military and police personnel to military courts, despite the fact that the Code of Military Justice does not cover homicide, maltreatment and the like. The broad powers concentrated in the hands of the military in the emergency zone further diminish the role which civil institutions might otherwise play in applying the rule of law.

50. Establishing a Human Rights Office under the auspices of the Attorney-General has admirably expedited the processing of cases of missing persons. Yet that fact in itself has not substantially enhanced the measure of protection extended to citizens at large. Undoubtedly, adequate access to registers of arrests maintained by the armed forces would have not only a curative but also a preventive effect. At any rate, the armed forces must be prevailed upon to co-operate more closely in the emergency zone with prosecutors and judicial authorities. Moreover, the latter are in dire need of material and human resources, as was pointed out in last year's report.

51. The situation of the victims among the indigenous population in the affected areas remains dismal. Humanitarian aid from national and international sources is an increasingly vital necessity. A long-term development strategy, designed to eliminate the poverty and neglect which are among the root causes of the Ayacuchan drama, is slowly getting under way, even though efforts have been set back by terrorist onslaughts.

52. Violence cannot be countered with violence alone. Only when the structural factors that contributed to the spiral of terror and counter-terror are properly dealt with, can there be any hope of preventing a recurrence of the excesses of the past. The Peruvian Government seems keenly aware of that fact. Its task remains a formidable one.

QUARTERLY NUMBER OF DISAPPEARANCES IN PERU
OVER THE PERIOD 1980 - 1986



Cases referred to in para. 28.