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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 the visit to Peru by two members of the Working Group
on Enforced or Involuntary Disappearances (17-22 June 1985)

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I. INTRODUCTION

1. Upon the invitation of the Government of Peru, two members of the Working Group on Enforced or Involuntary Disappearances, Mr. Toine van Dongen and Mr. Luis Varela Quirós, visited Peru from 17 to 22 June 1985 on the Group's behalf. */. The purpose of the present report on their mission should be understood as an effort to provide the Commission on Human Rights, as the Working Group's parent body, with an analysis of the situation of disappearances in Peru. It must be emphasized that the report relates primarily to the situation as the mission's members found it in June 1985. It therefore only covers facts and developments until that point in time 1/.

2. In the conduct of the visit the two members of the Working Group were received by the President of the Republic, the Prime Minister and Minister for Foreign Affairs, the Ministers of the Interior and Justice, the President of the Supreme Court, the Attorney-General (Fiscal de la Nación), the Joint Command of the Armed Forces, the Political-Military Commander of National Security Sub-Zone Nr.5 and other high officials of the Government as well as by local authorities in Ayacucho and Huanta. The members also met a great number of witnesses, relatives of missing persons and representatives of their associations as well as organizations dealing with human rights in general. Dignitaries of the Roman Catholic Church and its Episcopal Social Action Committee (CEAS), representatives of universities, educational and national development institutions, academicians and members of the Peruvian Parliament, the bar and the media were also heard. During the short time available, every effort was made to obtain from different segments of Peruvian political, legal, religious and intellectual life a maximum of views on the complex socio-political environment in which enforced or involuntary disappearances developed. The meetings both with officials and non-governmental sources were not only limited to the capital of Lima, but further expanded during the Group's visit to the cities of Ayacucho and Huanta on 20 and 21 June. The mission's members wish to stress that they received every co-operation and assistance from the Peruvian Government in the organization of their meetings with officials and did not encounter any obstacles in receiving private informants, witnesses, or relatives of missing persons. They were, however, not allowed to visit military compounds.

*/ see also the subsection concerning Peru in the Working Group's report (E/CN.4/1986/18).

3. As the Working Group's mandate is limited to the examination of questions relevant to enforced or involuntary disappearances, the present report focuses on that phenomenon. Thus, allegations of summary or arbitrary executions and torture, that were brought to the attention of the two members of the Working Group could not be dealt with on their merits in the framework of this report.

4. Chapter II discusses the context of violence in which disappearances have occurred. Chapter III briefly explains the nation's legal and institutional framework in which the problem has to be considered. Chapter IV describes the main characteristics of individual cases of disappearances which were brought to the Group's attention, the mechanics involved as reported by relatives and witnesses, and the steps taken by them before the authorities; it further gives an appreciation of the quality of the evidence by quoting some typical testimonies and provides a detailed statistical summary; the chapter also contains a graph showing the development of the phenomenon, based on the date of the cases of disappearances which the Group has transmitted to the Government of Peru. In chapter V the position of the Government of Peru and of other official sources, such as the Office of the Attorney General, is reflected; chapter VI describes the different non-governmental sources from which the Working Group has received information; chapter VII contains observations on social and economic consequences. Finally, concluding observations are presented in chapter VIII of the report.

5. It should be born in mind that, as a matter of principle, the Working Group on Enforced or Involuntary Disappearances discharges its mandate in a humanitarian spirit, taking a non-accusatory approach. The mission two of its members have undertaken in Peru should be viewed in the same light.

II. CONTEXT OF VIOLENCE

6. This part of the report briefly retraces the context of violence in which disappearances reported in Peru must be considered. For in both intellectual and practical terms it is not feasible completely to divorce the issue of disappearances from related violations of human rights or from the socio-political processes that have engendered them. The chapter, however, is limited to aspects necessary for a general understanding of this context only. The Working Group's mandate does not permit it to go beyond that, nor could a visit of only seven days result in a comprehensive study of the complexities involved.

7. Ayacucho, capital of the department by the same name, lies in the Andean mountains, about half an hour's flight to the south east of Lima. At about 2,500 metres altitude, this proud and pretty city, in 1824 witnessed a battle that marked Peru's independence. Its name signifying "corner of death" in the local Quechua, Ayacucho has many a time before and after that event been the scene of bloodshed and rebellion. The latest of these episodes commenced in May 1980, on the eve of democratic government following 12 years of military rule.

8. The violence this time was unleashed by a movement called Sendero Luminoso (Shining Path). It is said to have been founded in the early 1970s by a group of individuals at the University of Huamanga (Ayacucho city) where its presumed leader, Abimael Guzmán, was then teaching philosophy. Although it has never issued an authoritative programme or manifesto, the movement is believed to combine elements of marxism with certain ideas prevailing among the Quechuan indigenous populations. To execute their revolution, the movement settled in the extremely poor and underdeveloped Ayacucho region, whose people feel a particularly strong attachment to their ancient civilization and culture.

9. Abimael Guzmán and his followers had been preparing the ground for their revolution for almost 10 years in the remote Andean villages of Ayacucho and among the students of the University of Huamanga, before they turned from preaching to practicing violence. In May 1980, during the elections that brought Mr. Belaúnde Terry to the nation's presidency, Senderistas dynamited ^{2/} ballot boxes in a small Ayacuchan town. At first, terrorist actions apparently consisted of penalizing village authorities, who in the movement's view had been negligent in their duties or had committed abuses of power. Other targets were common criminals, such as cattle thieves, or persons who were considered amoral, such as unfaithful spouses. It seems that by applying this kind of "justice" and what they called "new morals" ^{3/}, although with the utmost cruelty, including torture and assassination - often in the form of public executions - Sendero Luminoso initially succeeded in gaining considerable support among the peasants.

10. Thoroughly familiar with the language, customs and traditions of the Quechuan people, Sendero Luminoso succeeded in exploiting effectively the misery and feeling of abandonment in Ayacucho, an impoverished part of the country that had suffered from centuries of neglect and become alienated from prosperous Lima, the heart of the political, economic and intellectual life of the nation. In this connection it must be understood that, although indigenous peoples account for an estimated 45 per cent of the population nation-wide, they constitute over 90 per cent of the population in the Ayacucho area.

11. At a later stage, Sendero Luminoso seemed to resort to indiscriminate killing of any authority, including those held in great esteem by community members, to forced recruitment of young boys and girls for its subversive attacks and to instigation of jealousy and hatred among different communities thereby orchestrating hostile acts against those who refused to support the movement. This new attitude of sowing terror and aggression, included the destruction of badly needed agricultural machinery, the closing of regional markets as well as the killing of peasants who refused to follow Sendero's dictates of subsistence farming. All of that probably marked a turning point in the popular support for Sendero Luminoso.

12. One of the principal targets of Sendero Luminoso was naturally the police, mostly the Civil Guard. Thus a number of police posts were bombed and individual policemen killed. From the middle of 1982, members of the armed forces were likewise made the targets of assassinations. Sendero also dynamited electric power stations, pylons, bridges and mines, resulting in heavy material losses and economic damage. Statistical information to that effect was provided by the Minister of the Interior and is reflected in para.63.

13. All non-governmental sources meeting with the mission's members unequivocally condemned Sendero Luminoso and its methods. Also those who criticized the Government, alleging that in fighting terrorism it had allowed the forces of law and order to disregard the Constitution and laws of the land, admitted that the violence had been triggered off by Sendero.

14. Although no precise figures on the actual strength of Sendero Luminoso were provided by the military authorities at the time of the visit, they indicated that in general terms the armed forces were now controlling the situation much more effectively than in the period 1982-1984. Members of the Government expressed the fear that the movement, having lost much of its traditional support among the rural population in the emergency zone, might increasingly shift its activities to the cities, in particular to Lima, where many terrorists had found refuge.

15. The reaction of President Belaúnde Terry and his Government to the terror and violence unleashed by Sendero Luminoso consisted first in proclaiming a state of emergency on 12 October 1981 in 5 provinces of the Department of Ayacucho. The area under a state of emergency has varied since and was extended, in June 1984, to the entire country.^{4/}

16. In the beginning the fight against terrorism was entrusted to the different police forces,^{5/} first of all to the specialized anti-subversion unit of the Civil Guard known as "Sinchis"; but the regular Civil Guard, the Republican Guard and the Peruvian Investigatory Police were also involved as were the National Intelligence Services.

17. As Sendero Luminoso was increasingly strengthening and spreading its influence, the President, on 28 December 1982, directed the armed forces to assume control of internal order in the emergency zone. The political military commanders were made directly answerable to the Joint Command of the Armed Forces and beyond to the National Defence Council (Consejo Nacional de Defensa) headed by the President of the Republic.

18. With the advent of the military, the spiral of violence seems to have escalated further. Armed clashes and almost full-scale battles between the armed forces and guerrillas claimed the lives of many soldiers, Senderistas and civilians. In their fight against terrorism, the armed forces were reported to have committed summary executions, either in military detention centres or in raids against communities, mainly in those

raids against communities, mainly in those perceived to have supported Sendero Luminoso, apparently as a warning against collaboration or in reprisal for past participation in its activities. From time to time mass graves were uncovered.^{7/} Gradually, the conflict began to take on the proportions of a war. By June 1985, it was estimated that over 4,000 people had died in the strife.

19. As the peasants' determination to oppose the terrorists grew, a "civil defence" movement ^{8/} emerged, undermining Sendero Luminoso's influence and indeed domination over large parts of the rural population. It appears that several communities in fact took the initiative of defending themselves with all available means and outside the institutionalized legal context against the terrorists. The armed forces in the emergency zone have encouraged and actively supported the development of the "civil defence" movement, have given assistance and instructions for the organization of patrols and have provided them with food and other essential goods. Several witnesses alleged that the initiative to participate in the "civil defence" had not always come from the peasants themselves, but that the armed forces had in fact induced communities by various means to join in the patrols; they were co-ordinating the patrolling operations and had instructed the participating peasants to intercept and arrest any person unknown to them or not connected with other military or security activities. The Political-Military Commander in Ayacucho stated in his meeting with the mission's members that, whenever "civil defence" patrols took prisoners, they had to deliver them to the armed forces.

20. Several witnesses stressed that the "civil defence" system had further contributed to the escalation of violence, alleging that many innocent people had become victims of the peasants' taking the law into their own hands. Traditional rivalries among communities and groups of different ethnic origin or religious belief were also exploited on the pretext of hunting down terrorists, leading to massacres, looting and deliberately false denunciations of innocent persons to the police or armed forces. Many of these persons were later reported to have disappeared as were many "civil defence" peasants who probably died in encounters with rival communities or terrorists; fights with the latter frequently resulted in heavy losses to the "civil defence", given their primitive weapons ^{9/}.

21. Many witnesses stated that in the climate of violence affecting the emergency zone, there was no protection for life or any other human rights. The inhabitants of the area seem to be as much in fear of terrorist violence as of the violence of the armed forces, the police or the security agencies. A number of witnesses said that in recent months the activities of Sendero Luminoso had fallen off notably and that the armed forces had succeeded in controlling the situation, at least in the Ayacucho area. The Group nevertheless received complaints of approximately 100 disappearances in the first six months of 1985.

III. LEGAL AND INSTITUTIONAL FRAMEWORK

22. This chapter refers to some of the constitutional and legal provisions that constitute the juridical framework in which the problems relating to enforced or involuntary disappearances in Peru should be understood. Not all legal provisions that would have to be considered to establish the extent to which the rules of domestic law are being observed can be mentioned here; but reference is made to those rules that were most frequently cited in interviews with the Working Group and which appear to be of special interest and concern to the lawyers and jurists dealing with enforced or involuntary disappearances in Peru.

The Constitution

23. Title 1, chapter 1, of the Constitution that has been in force in Peru since 28 July 1980 contains a list of the fundamental rights of the individual, which include the right to life, to physical integrity, to personal freedom and safety, to honour and good reputation, and to personal and family privacy. Article 2 of the Constitution, dealing with the guarantees designed to secure personal freedom and security, states that "every individual is considered innocent as long as his guilt has not been established by a court", that "no one may be arrested without a written court order", that "every individual shall be informed immediately and in writing of the cause of, or reasons for, his detention" and has "the right to communicate with and be advised by an attorney of his choice" that "no one can be held incommunicado except in a case indispensable for the investigation of an offence in the form and time provided for by law", that "the authorities have an obligation to report without delay the place where the detained individual is being held", and that "statements obtained under duress are not admissible", and that "whoever makes use of it incurs criminal liability."

24. Title IV, chapter IX, of the same Constitution is concerned with the judiciary and contains provisions designed to ensure that any person accused of an offence shall have the right to a public trial with due guarantees before a competent and impartial court. Rules expressly sanctioned by the Constitution include the right not to be punished without a trial or deprived of the right of defence as well as the prohibition of torture and inhuman or degrading treatment.

Habeas corpus

25. The Constitution also provides for habeas corpus proceedings, to which all persons may have recourse in the event of an act or omission by any authority, official or individual that interferes with or threatens individual freedom (art. 295 of the Constitution). Pursuant to Act No. 23, 506, habeas corpus proceedings may be instituted not only by the injured party, but also by any other person acting on his behalf, with no need for a power of attorney, lawyer's signature or any other formality; they may even be

instituted orally or by telegram (arts. 13 and 14). Any examining magistrate of the place where the detained person is being held or of the place where the action giving rise to the habeas corpus proceedings was taken is competent to hear the case (art. 15). Provision is made for a summary and flexible procedure designed to secure an immediate and effective defence of the injured party, under which the Office of the Attorney-General may participate in the proceedings solely to assist the defence of the alleged injured party. In cases of arbitrary detention the judge must order the responsible authority to produce the detained person on the same day and to explain its conduct. If he finds that there has been arbitrary detention, he must release the detained person immediately (art. 16). If there is no arbitrary detention but some violation of rights gives rise to the habeas corpus proceedings, the judge must call upon those responsible for the violation to explain themselves and settle the matter outright within one calendar day (art. 18).

The Office of the Attorney-General (Ministerio Público)

26. Persons who consider that their rights under the Constitution and the law have been violated may also have recourse to the Office of the Attorney-General, which is "the autonomous organ of the State whose principal functions are to defend legality, citizen's rights and public interests, to represent society in proceedings for the defence of the family, minors, the legally incompetent and the interests of society, as well as to safeguard public morality, to prosecute crime and to secure civil indemnification" (art. 1, Organic Law on the Office of the Attorney-General). Pursuant to article 250 of the Constitution, the Office of the Attorney-General is responsible for "instituting, on its own initiative or at the request of a petitioner, actions at law in defence of legality, of citizen's rights and of public interests protected by the law". The functions of the Attorney-General, who has authority over all public prosecutors, include the following: "to take, on his own initiative or upon a sufficiently proven complaint from any person, such action as may be appropriate against civil servants and public employees for acts or omissions for which they may be liable" and "... to investigate the facts, to put an end to the injurious or deleterious situation and, where necessary, to seek the punishment of those responsible, whenever he is in any way apprised of acts or omissions violating the rights of an individual or of a citizen..." (art. 66, paras. 7 and 8, of the Organic Law on the Office of the Attorney-General). In order to obtain any information or documents that may be necessary, the Attorney-General may approach the various organs of the State, including autonomous bodies and any other public or private institution which have a duty to supply what has been requested, except when the information involved is of a confidential nature and, if disclosed, could adversely affect national security (art. 6).

27. In practice, and as a consequence of the above-mentioned legislation, members of the general public approach the prosecutors for help and protection when they consider that any of their rights, or the rights of members of their families, have been violated. If it is found that some offence has been committed, the prosecutors must take the necessary steps to protect those rights and to institute an investigation and the relevant criminal proceedings.

The state of emergency

28. Article 231 of the Constitution provides that the President, with the consent of the Council of Ministers, can declare a state of emergency or a state of siege for a specific period in part or the whole of the national territory. A state of siege has not been decreed in recent years in Peru. A state of emergency may be decreed in the event of a disturbance of the peace and internal order, a disaster or serious circumstances affecting the life of the nation.

29. While a state of emergency is in force the constitutional guarantees set forth in paragraphs 7 (inviolability of the home), 9 (freedom of movement), 10 (freedom of assembly) and 20 (g) (freedom from arrest without a warrant) of article 2 of the Constitution may be suspended. Pursuant to article 275 of the Constitution, the armed forces assume control of internal order in emergency situations when the President of the Republic so directs. President Belaúnde Terry so directed on 28 December 1982, and successive renewals have kept the state of emergency in force until the date of the mission.

30. From a legal point of view, the judiciary and the Office of the Attorney-General do not lose their powers or functions, or discontinue their activities, during the period for which the state of emergency is in force. Article 8 of the Organic Law on the Office of the Attorney-General states that "the declaration by the President of the Republic of a state of emergency or of siege, in part or the whole of the national territory, shall not suspend the work of the Office of the Attorney-General, nor the right of citizens to have personal recourse or access to it, except in respect of those constitutional rights that have been suspended for as long as the relevant declaration remains in force; in no circumstances, however, may it interfere in matters within the domain of the military authorities".

31. The right of recourse to habeas corpus remains in force during a state of emergency, except that the right of the courts to establish the legality of a detention is suspended. However, courts may still determine whether other rights have been observed, such as the right of the detained person to be assisted by an attorney and to be informed of the reasons for his detention. Also under a state of emergency, courts may determine whether the obligation to indicate without delay where the detained person is being held and whether the prohibition on holding a detained person incommunicado have been complied with.

32. The Code of Criminal Procedure authorizes detention incommunicado on an order by the examining magistrate for a period not exceeding 10 days when it is essential for the purposes of the investigation. The period during which a detainee can be held incommunicado was extended by the Anti-terrorist Law of March 1981, which establishes that the police may place persons suspected of terrorism in preventive detention for 15 days. Their detention must be reported to the Office of the Attorney-General and to the judge within 24 hours of their arrest. This law also authorizes the transfer of the detainees anywhere within the country, if it is necessary for inquiries or for the security of the detainee.^{10/}

33. The declaration of a state of emergency does not do away with the functions which the Constitution and the law have assigned to each branch of the armed forces and the police forces. Consequently, the fact that the armed forces assume control of internal order would not imply that they take over the functions of the police forces, and in particular the investigation of offences committed in the emergency zone. The information collected from official sources during the visit to Peru confirms that the functions of the police forces are being maintained intact and that persons arrested by the armed forces must immediately be handed over to the Investigatory Police, which must notify the judge within the next 24 hours.^{11/}

34. On 6 June 1985, a few days before the members of the mission arrived in Peru, Act No. 24150 was enacted establishing rules to be complied with in states of emergency or siege when the armed forces assume control of internal order in part or the whole of the national territory. According to article 5 of the Act, the functions which the Political Military Command assumes for the control of internal order in emergency zones include the following: assuming command of the armed forces and police forces situated in its area of jurisdiction; applying to the competent organs for the dismissal, appointment or transfer of political and administrative authorities within its jurisdiction; guiding, co-ordinating and supervising the activities of different sectors of the civil administration, public bodies, departmental corporations and other institutions of the public sector. Article 10 of the Act declares all military and police personnel serving in the areas under a state of emergency to be subject to the Code of Military Justice. Violations of that code will be subject to military jurisdiction, except for acts not committed in the line of duty.

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

35. In its report to the Commission on Human Rights at its forty-first session, the Working Group stated that it had transmitted to the Government of Peru 389 cases of enforced or involuntary disappearances, all of which had taken place in the area under a state of emergency. After the issue of its report to the Commission and prior to the visit to Peru, the Group transmitted 62 more cases to the Government of Peru under the urgent action procedure.

36. In the course of their interviews the members of the Working Group's mission received hundreds of oral and written complaints about disappearances. The present chapter contains a summary and analysis of the main characteristics of the complaints received during the visit and describes some typical cases as well as the steps taken by the relatives before the authorities to determine the whereabouts of the missing persons. In addition, references have been made to cases received earlier whenever this appeared necessary for the understanding of the situation. The statistical summary given at the end of the first part of this chapter is also based on the total number of cases examined and transmitted by the Working Group.

37. The reports received during the visit provided information on the identity and particulars of the missing persons, on the place, date, time and circumstances of their disappearance; many gave a description of the persons who carried out the arrest or abduction, as well as details of places where the person had been or was supposedly being detained; mention was also made of witnesses of the detention, legal steps undertaken to locate the missing person, petitions to the authorities and various other data relating to each case. The members also received documents on the disappearance of large groups of persons, studies or statements of a general nature relating to the problem and copies of a variety of files pertaining to legal procedures. This material also contained allegations concerning torture or killings of groups of people in detention centres, peasant communities or in various other circumstances, and about the existence of mass graves in which victims of summary or arbitrary executions were said to have been found. This information was transmitted to the Special Rapporteurs on torture and on summary or arbitrary executions.

38. The members interviewed a great number of relatives of missing persons in Lima, Ayacucho and Huanta. Since it was impossible to see everyone who wished to be received, the members requested the various relatives' organizations to select the cases they considered to be most representative for the hearings and to submit the remaining cases in writing. The members of the Group heard the testimonies of approximately 50 persons, who were relatives of missing persons, members of communities, relatives' organizations and institutions affected by the disappearance of some of their members. Following the visit to Peru, the Working Group examined the material received and transmitted to the Government of Peru 391 cases which had not previously been transmitted and which contained sufficient information, in accordance with the Group's criteria. Nearly all the cases received in Peru included copies of the complaints submitted to the provincial prosecutors or the Attorney-General, and often to the military authorities. The majority of the complaints contained documents intended to prove conclusively the existence and identity of the missing persons, such as photocopies of voter's cards, military service-books, birth and marriage certificates, taxpayer's cards, certificates issued by the leaders of peasant communities, work or education certificates, etc.

39. The reports received during the visit alleged in almost all instances that an arrest was made by military or police personnel or by "civil defence" groups. When the report involved military, police or security personnel, the relatives often specified the branch or agency, particularly if they had recognized any of the persons carrying out the arrest or their uniform. In some cases, the arrest was said to have been carried out by members of various branches operating together, and in other cases the relatives were not able to identify the persons making the arrest because their faces were covered up and they wore fatigues common to several branches or agencies.

40. In considering all the complaints received during the visit, the Working Group has observed that many of the disappearances apparently occurred as a result of arrests made openly during the daytime by uniformed soldiers or policemen carrying out checks or military operations in peasant communities, or who arrived in service vehicles and did not have their faces covered up. A typical example can be found in the following report, reproduced in extenso, about the disappearance of seven persons:

" On 28 February 1985 at 7 in the morning, soldiers from the army detachment in Pampa Cangallo and Sachabamba turned up in our community; they collected all community members together and roughed us up; after ill-treating us they captured seven persons and took them away to the Pampa Cangallo detachment and then to Sachabamba, where we are sure that they are being held. Accordingly, we, the authorities of the community, went to the Pampa Cangallo and Sachabamba military posts so as to check out the situation of the detainees, but we were refused any information, and told they were not there. They told us that we should go to Cangallo; that is why all the relatives of the seven persons have gone to the two military posts in Cangallo but they have received no information either".

41. In some cases the information indicates that the arrest was carried out by military personnel accompanying "civil defence" groups. One such report concerning six missing persons states:

"On 9 July of 1984, members of the army and a large group of peasants came to our community of San Cristóbal de Manzanayoc (which borders on the community of Ccaccamarca), on the pretext of searching for alleged terrorists who had burned down houses in the neighbouring community of Ccaccamarca and they did all kinds of things to us, accusing us of being terrorists. The peasants who accompanied the army in these arbitrary acts came from Ocros (a district in the Province of Huamanga - Ayacucho). The members of the community who came to our village with the soldiers were armed with axes, knives, machetes, slings and sticks, and formed what they call the "Civil Defence Front" or "Montoneros". They arrested a large number of persons who were going about their normal work in the community. They raided the houses, breaking down the doors by brute force, and taking the people off to the main square. They also arrested them in the fields where they were working. It was indiscriminate mass arrest, and only some of us managed to escape that act of barbarity. Out of a total of 24 people arrested only 18 were released, and the rest became missing detainees, since the relatives have been denied any information by the military at Ocros barracks to which they were taken."

42. In certain cases, mainly in towns, or villages, the reports indicate that the people were arrested in their homes, in the middle of the night, by armed men, wearing fatigues (mostly dark pullovers and olive-green trousers), military boots and balaclavas. A characteristic example of this kind of arrest ^{12/} was reported as follows:

"After midnight, about 30 armed men, with balaclavas and rifles climbed over the wall and entered the house. They threatened to kill all the family (my husband and my children) and took away my son half-dressed, with the clothes he wore in bed. We were forced to remain by the wall, with our hands up, we were afraid to move. I shouted: "Where are you taking my son?" Somebody answered: "Shut up, or I'll kill you." My son was taken to the airport. I know that, because I followed them in hiding. My daughter and myself went to the army barracks and to the Investigatory Police, but they told me to stop seeking my son, because I might be killed. Fifteen days after the arrest I received a message from my son, which was delivered by somebody who had been released from Los Cabitos barracks. In the message, my son said that he would be transferred to the Investigatory Police and then released. But this message was the last I received from him. I reported the facts to the local prosecutor and to the Attorney-General, but I could not get any information on his whereabouts."

43. A witness reported a case of disappearances carried out by Sendero Luminoso in a community, in reprisal against members of the community who had joined the "civil defence" groups. He described the facts as follows:

"Three persons from Janes, located in the area of Huanta, higher in the mountains, had taken their livestock to a lower region for pasture. Sendero knew that they were members of the "civil defence". They never returned to their community. Three days later, the community decided to send an armed group to their rescue, consisting of 24 selected men and women armed with axes, knives, sticks, slings, etc. They searched for the three missing persons during the day and questioned everybody in the communities around the place where they had disappeared. At about 5 p.m. they were already returning to their homes, when, near a place called Paqui y Mainay, about 50 terrorists encircled them and took them away to an unknown place. The 24 persons have been missing since".

44. Many reports indicate that the missing person was arrested by members of the "civil defence". From an examination of the complaints, it emerges that when members of the "civil defence" made arrests, the witnesses could often identify some of the captors and give their names to the authorities, since they came from neighbouring communities. In these cases it was frequently possible to establish later that the detainees were in military barracks or other places of detention (see para.52). Moreover, the "civil defence" groups were often accompanied by armed military personnel, particularly when they were making arrests.

45. The Group received testimony from persons who maintained that they had been detained by military or security personnel and had been missing persons for some time, after which they had been released. One witness recounted his detention on 7 May 1984, along with his nephew, his brother

and two other persons, by members of the "civil defence" in the community of Manyac, Acobamba district, Huancavelica province. They were reportedly handed over to the army, which took them to the military barracks at Acobamba. The witness stated that he and his relatives had been tortured for several days, had received very little food and had been tied up and blindfold most of the time, except when they had been forced to dig graves in which four persons unknown to the witness had been buried later. The witness was released after eight days' detention. Before being released he was reportedly threatened with reprisals if he spoke about what he had seen and suffered in the barracks. His nephew and brother, who were still being held when the witness was released, are missing.

46. The members of the mission considered carefully the question of the identification of the persons carrying out the arrests and the accusations levelled in this regard against the armed forces and the police. The members frequently asked the persons they interviewed on what grounds relatives of missing persons asserted that the people who took their relatives away were soldiers and not members of terrorist organizations in disguise, specifically in cases in which the abductions were effected during the night by groups who covered up their faces with balaclavas. The question was all the more pertinent as army fatigues may be freely purchased on Lima street markets, and as balaclavas (a sort of woolen skimask) are very commonly worn as protection against the cold at night. The answers received may be summed up as follows: (a) the disappearances in which the abductors had their faces covered up took place in towns or villages after 10 p.m., i.e. during the period when there was a night curfew; at that time, the only persons who could move about freely were the police or military, since there was very strict control over streets and roads; (b) in various cases, witnesses to arrests saw police or military vehicles or helicopters; (c) persons who were arrested together with the disappeared persons or in a manner following the same pattern and who were released some time later affirm that they were held in military detention centres; (d) in a few cases the missing persons were seen entering military barracks and were missing from that time on; (e) a number of relatives recognized or identified the persons who carried out the arrest.

47. Civil servants, university teachers, lawyers and local authorities of the towns of Ayacucho and Huanta, who were interviewed by the representatives of the Group, seem to have no doubt that the armed and police forces are responsible, at least for a large part of the disappearances in those areas. One lawyer said that on a number of occasions he had negotiated directly with the armed forces and in exceptional cases had secured the release of disappeared persons.

48. It is difficult to evaluate to what extent Sendero Luminoso has abducted persons and made them disappear. Non-governmental sources expressed the view that Sendero's most characteristic method of elimination was outright killing, mostly leaving the bodies displayed as a warning. They explained that Sendero could hardly have afforded to detain

persons in secret places, particularly as many of their units seemed to move about the countryside continuously. Nor, it was felt, would it have been practicable for Sendero to abduct people, kill them and bury them in mass graves, some of the latter having been dug by bulldozers. They admitted, however, that a certain number of missing persons, mostly young boys and girls, might have joined Sendero Luminoso or other terrorist organizations, or have been recruited by force; it could not therefore be excluded that some of those persons had been reported missing by their relatives. Members of the Peruvian Government and the armed forces on the other hand told the Working Group that the terrorist organizations were accountable for practically all disappearances.

49. According to the many reports received, particularly in Ayacucho, the population in the emergency zone seems to be aware of the presence of detainees in the barracks and other unofficial detention centres. There is frequent mention of clandestine messages received by relatives and of information provided by persons detained temporarily and then released. The latter generally wish their names to be kept secret, but give the relatives such information as they have about persons in detention. In fact the relatives often specify the local centres at which they claim the missing persons were held during the early part of their detention, before being transferred to other places. Some witnesses also reported on transfers of detainees.

50. As to the fate of the disappeared persons, relatives seem to fear that some of them died as victims of summary executions or torture in detention centres. In fact, many relatives search for their loved ones in the clandestine mass graves discovered in the area. Other testimony suggests that some missing persons are still held in barracks or clandestine detention centres. Again, it was said that some detainees might have been released and have migrated to other parts of the country in search of refuge.

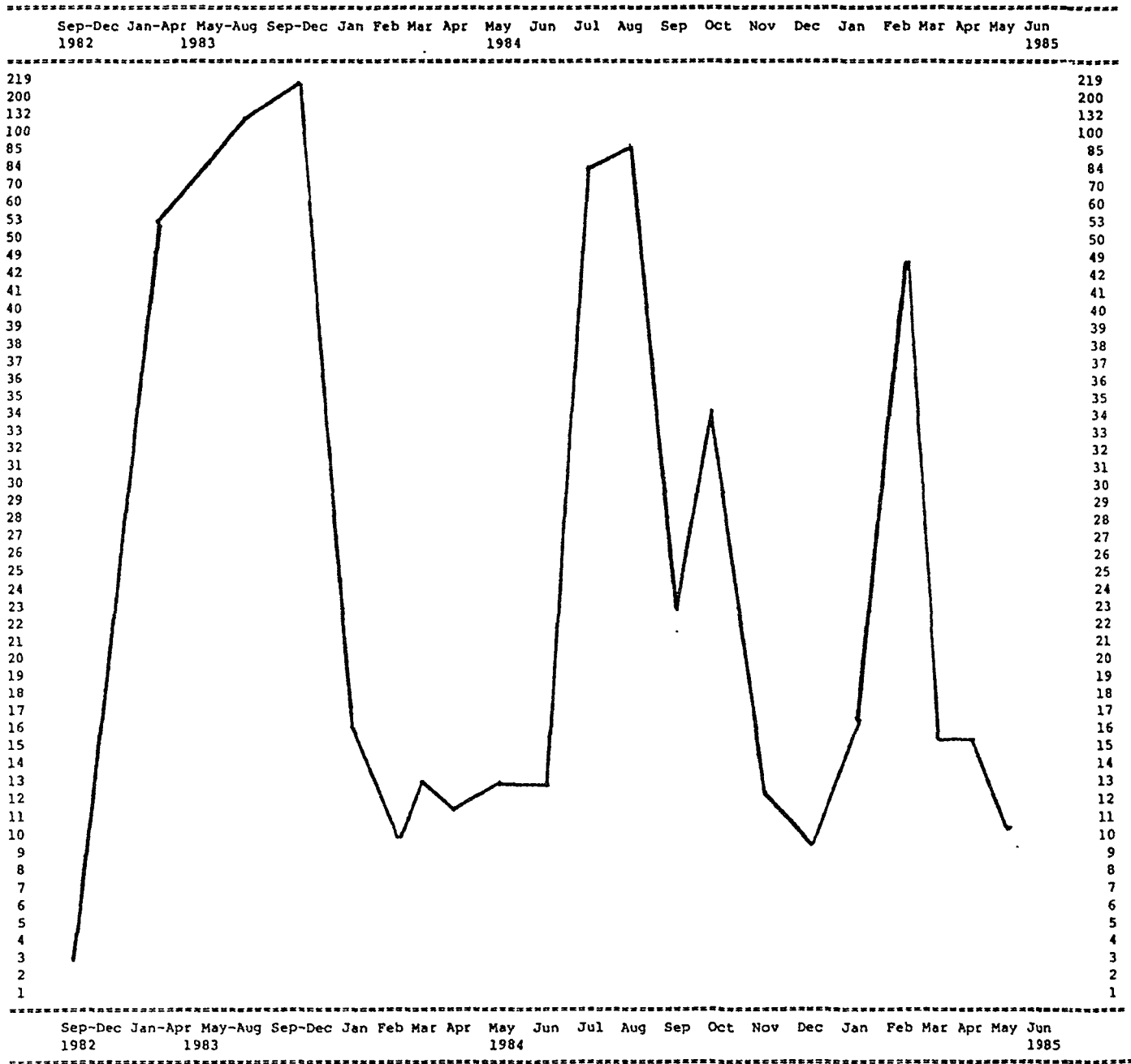
Statistical summary of all reports on enforced or
involuntary disappearances transmitted by the Working Group
to the Government of Peru

51. A detailed analysis of the total of 872 cases transmitted by the Working Group to the Government revealed that in 181 cases the missing persons had allegedly been arrested in their peasant communities, including 167 cases in which the arrest was carried out during raids by military personnel. In 29 of these cases the use of a helicopter was mentioned in connection with raids in communities situated in the mountains. In 17 cases the persons were reported to have been arrested in checking operations at road-blocks or in the cities, towns or villages; in 170 cases at their homes and in 74 cases in public places (markets, schools, popular festivities, squares, streets) or at work. In the remaining cases there is an indication of the geographical locality, village or city, with no further details. In 435 cases the presence of witnesses to the arrest was mentioned. In 73 cases the reports mentioned

that the arrest had been carried out by military personnel (without identification of the branch involved); in 169 by members of the army; in 91 cases by Navy personnel, in 18 cases by PIP (Investigatory Police) personnel, in 63 cases by the Guardia Civil and in 28 cases by the "Sinchis" (Counter-insurgency corps of the Guardia Civil), in 36 cases by the Department of Intelligence Services, in 112 cases by unspecified security forces, in eight cases by the Guardia Republicana and in 45 cases by "policemen". There were also 46 cases in which the arrest was reportedly carried out by members of the "civil defence" and 38 in which the "civil defence" was accompanied by military personnel. The analysis also showed that in eight cases the reports indicated that the arrest had been made by plainclothes men (in three of these cases the men travelled in military vehicles), in 36 cases that the persons had had their faces covered, in 39 cases that the arrest had been carried out by "combined forces" and in two cases by "civil authorities". Furthermore, in the cases in which military forces were mentioned as being responsible for the arrest, the military detachment or the place where it was based was indicated in 136 cases. The names of persons who had made the arrest or had participated in the operation were mentioned in 78 cases (in 22 cases military personnel were identified in the reports and in 56 cases "civil defence" members were identified).

52. Concerning the hour of the arrest, 97 reports specified that it had taken place during the night and 184 during daylight hours. Finally, in 264 cases mention was made of the military or police premises where the person was taken immediately after the arrest or at other stages of detention and in 120 cases the missing persons were reportedly seen in detention by witnesses, especially persons who were released from detention, relatives or lawyers.

Graph showing the frequency of reported disappearances based
on the dates of their occurrence



Steps taken by the relatives of missing persons before the authorities

53. The relatives of missing persons, together with their associations, Peruvian human rights organizations and institutions concerned have availed themselves of a variety of means under the Constitution and Peruvian law to investigate and shed light on the whereabouts and fate of those who have disappeared. They have applied to the President of the Republic, the Congress, the judiciary, the Office of the Attorney-General, local and provincial prosecutors and military and police authorities. They have also asked the Peruvian Catholic Church to intercede on their behalf.

54. During their visit to Peru, the members of the mission received many copies of all kinds of petitions. In the course of the interviews, the members were, therefore, particularly interested in the functioning in practice of the procedures established under Peruvian law for the protection of human rights, and the following paragraphs summarize the information obtained in this regard.

55. When a person is arrested or abducted, the relatives generally go first to the local headquarters of the armed or police forces whom they believe to have made the arrest. In some cases, it was reported that detention was initially acknowledged, usually by low-ranking officers, but later denied.^{13/} When these inquiries prove fruitless, many relatives submit complaints and petitions to the Military Political Commander. Moreover, the relatives in most cases go to the local or provincial prosecutors to report the disappearance. In very few cases have the relatives submitted an application for habeas corpus to the competent court.

56. The members of the mission asked a number of Peruvian lawyers why applications for habeas corpus, in principle a straightforward and expeditious procedure, had not been used more often in connection with missing persons ^{14/}. The most precise answers indicated the following: (a) the habeas corpus procedure is relatively new and many lawyers are not yet familiar with it; (b) an application for habeas corpus does not require the assistance of a lawyer on first instance, but a lawyer is needed for the purposes of an appeal (art. 20 of Act No. 23,506). Lawyers, especially those in the areas under a state of emergency, frequently give advice to the relatives, but prefer not to involve themselves directly in procedures that imply accusations against military personnel, for fear that they will be the object of reprisals or they themselves will be regarded as terrorists by the military authorities; it was said that some lawyers who filed applications for habeas corpus had been unjustly penalized in military courts and that one of the lawyers who dealt with human rights issues in Ayacucho had been the victim of a bomb explosion at his home; and (c) the fundamental reason for such a small number of applications for habeas corpus lies in the lack of confidence, among both lawyers and the population at large, in the integrity of the judiciary and hence its ability to protect human rights.

57. All the lawyers consulted were unanimous in affirming that the fundamental reason for not resorting more frequently to habeas corpus was lack of trust in the judiciary, which they viewed as being less effective than the Office of the Attorney-General in protecting human rights.

58. Criminal proceedings against military or police personnel accused of violations of human rights were in fact almost invariably referred to the military courts as a result of jurisprudence establishing a broad interpretation of what is regarded as an "offence committed on official duty".^{15/} Lawyers stated that, on the basis of this criterion, some judges refused to admit applications for habeas corpus when complaints asserted that the arrest had been made by military personnel, specially in the areas under a state of emergency. Moreover, in cases in which the judges decided to admit applications for habeas corpus, the inquiries were a mere formality when the arrest had occurred in the areas under a state of emergency.

59. The Office of the Attorney-General has played a much more important part in the investigation of alleged disappearances. In fact, most of the cases in which the relatives took action to ensure investigation of the whereabouts of their missing relatives were reported to the local and provincial prosecutors and, at times, to the Attorney-General. The members of the Working Group received hundreds of copies of such complaints.

60. However, human rights organizations and organizations of relatives of missing persons criticized the fact that the prosecutors had not investigated all complaints submitted to them thoroughly. They said that, in general, the prosecutors had confined themselves to sending official memoranda to the military or police authorities - which either did not reply or replied in the negative to their demands for information on the possible detention of missing persons - and to requesting investigations by PIP (the Peruvian Investigatory Police). Many prosecutors had thus not attempted to do more than take purely administrative steps and had in particular not exploited all possible means of identifying those responsible, which was the necessary precondition for initiating criminal proceedings. The prosecutors hardly ever summoned witnesses to the arrest of the missing person, nor did they make inquiries of the people living in the place at which the arrest had occurred as they should have done in accordance with the law. Most witnesses, however, recognized that some prosecutors tried to perform their duties and exercise their authority under the law, but their efforts were always hindered by the military authorities.

61. Many witnesses pointed to the difficulty inherent in the fact that, whereas the law preserved the powers of the prosecutors to conduct investigations and to protect human rights during a state of emergency, the police force, which was called upon in practice to make inquiries and produce evidence, was placed under the Military Political Command.

Consequently, the police force was not in a position to follow guidance given by the prosecutors that was not authorized by its military superiors (see para.75). While recognizing the risks and extremely difficult conditions under which the prosecutors had to operate and the very limited material and staff resources available to them, many witnesses felt that they could at least have pursued cases with abundant evidential material more vigorously. In some cases, the prosecutors had nevertheless taken firm action and had managed to identify the responsible parties and brought charges before the judge. However, once the proceedings were initiated in court, the judges became reticent, delayed the proceedings, raised jurisdictional conflicts and, ultimately, the Supreme Court had decided that jurisdiction for such cases lay with the military courts.

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

62. During their stay in Peru, the members of the Working Group's mission were received by the highest authorities of the Peruvian Government, in particular the President of the Republic, Mr. Fernando Belaúnde Terry, the Prime Minister and Minister for Foreign Affairs, Mr. Luis Pércovich Roca, the Minister of the Interior, General Oscar Brush Noel, and the Minister of Justice, Mr. Alberto Musso. The President and the members of his Government described in detail the strategy and tactics of Sendero Luminoso and other terrorist movements active in the country (such as Tupac Amaru and those connected with the drug traffic), which they considered mainly responsible for disappearances in Peru, and provided detailed figures as well as photographs of the human and material damages caused by them. The Prime Minister emphasized in particular that more than 4,000 persons had died as a result of violence, many of them peasants in remote areas; over 160 members of the police forces and about 60 other officials of the civilian administration had also lost their lives. Since Sendero Luminoso was, and to a certain extent still is, the predominant terrorist movement active in the area where the reported enforced or involuntary disappearances have occurred, the following paragraphs will concentrate on statements made by the Government with regard to that organization.

63. The Ministry of the Interior provided the members of the mission with a memorandum which is reproduced in extenso:

"From the beginning of the "armed struggle" (May 1980) to date, violent action by Peruvian Communist Party - Sendero Luminoso (PCP-SL) terrorists has resulted in 164 murders of members of the police forces: 118 (71.9 per cent) belonged to the Civil Guard, 8 (5 per cent) to the Investigatory Police, 37 (22.5 per cent) to the Republican Guard and 1 (0.6 per cent) to the police health division.

The highest number of murders of police personnel occurred in 1984, with 56 cases (34.1 per cent), followed, in descending order, by 1983 with 52 cases (31.7 per cent), 1982 with 31 cases (18.9 per cent) and 1981 with 6 cases (3.7 per cent). So far in 1985 there have been 19 murders (11.6 per cent).

Over the same period 68 (41.5 per cent) members of the police forces have been killed in Ayacucho, the department with the highest number of murders recorded. Continuing in descending order, Lima has had 47 murders (28.6 per cent), Huánuco 14 (8.5 per cent), Huancavelica and San Martín 7 each (4.3 per cent), La Libertad 5 (3 per cent), Pasco 4 (2.5 per cent) and other departments 12 (7.3 per cent).

During the same period, 80 civilian officials have been murdered: 29 in Ayacucho, 16 in Huancavelica, 12 in Pasco, 10 in Huánuco, 5 in La Libertad, 2 in Apurímac, Puno and Ucayali, and 1 in Junín.

Given the treacherous, callous and bloodthirsty character of the actions of the PCP-SL terrorists, it is not unlikely that, as the date of transfer of power approaches, murders of policemen and civilian and government officials will increase.

From May 1980 to date, PCP-SL terrorists have blown up 390 electricity pylons, with high economic costs to the country in the form of repairs, in addition to the consequences of disrupting the electricity supply, which affects productive and economic activity, and the psychological impact which this has on the population. Seventeen pylons were sabotaged in 1980, 28 in 1981, 41 in 1982, 100 in 1983, 109 in 1984 and 95 so far this year.

During the same period, PCP-SL terrorists have also carried out 401 attacks against police premises; 239 of them (59.6 per cent) were directed against the Civil Guard, 82 (20.5 per cent) against the Investigatory Police, 65 (16.2 per cent) against the Republican Guard and 15 (3.7 per cent) against the police health division.

During the period, terrorist elements have carried out 1,136 attacks against public and private premises, 552 (48.5 per cent) public and 584 (51.5 per cent) private premises; the most prominent attacks were perpetrated against institutions connected with foreign capital.

In view of the type of action generally engaged in by the PCP-SL and MRTA (Tupac Amaru) terrorists, on or about 28 July 1985 they are likely to step up their attacks against police premises, other public and private premises and electricity pylons, with the aim of continuing to gain publicity for their movement at the international level"

64. With regard to the reported cases of enforced or involuntary disappearances, the Prime Minister (also Minister for Foreign Affairs)

stated that the investigations initiated by the Government had not yet been concluded. However, initial results showed that well over 100 persons reported missing had registered on the electoral roll after the date of their alleged disappearance; the Government would furnish the Working Group with photocopies of the relevant evidence in due course.

65. The Minister of the Interior mentioned in this connection that more than 400 cases of registration on the electoral roll after the reported date of disappearance of the person concerned had been detected by his services. The Minister, furthermore, assured the members of the Working Group that the Attorney-General and his staff could count on the full co-operation of the competent police forces in his investigations into alleged cases of disappearances.

66. By letter dated 5 August 1985, the Government of Peru provided the Working Group with 49 photocopies of electoral identity cards, stating that they belonged to persons who had registered with the Electoral Roll Office of Peru after the date of their alleged disappearance. The same kind of information from the Government was received by the Group in February 1985 with regard to 17 cases, as reported to the Commission on Human Rights at its forty-first session (E/CN.4/1985/15/Add.1, paras. 17-18). Of the 49 replies received in August, 14 concerned cases that were included in the 17 replies received in February, so that the total number of cases for which a photocopy of an electoral identity card has been received is 52. For five of these cases the Government has provided two to four electoral identity cards belonging to different persons with identical names.^{16/}

67. As to the reasons and responsibilities for the reported disappearances, the Minister of the Interior handed the following aide-mémoire to the mission's members:

"Probable reasons that explain disappearances of persons in Peru:

1. There are persons, especially young persons of both sexes, who have been forced and/or induced to join the ranks of Sendero Luminoso and Tupac Amaru (MRTA) and are at present operating under cover.
2. Tendentious reports may have been made concerning alleged disappearances (fictitious names, persons still alive who have changed their identity cards to discredit the Government).
3. Persons have been kidnapped and murdered by members of PCP-SL for collaborating with the police or refusing to join the armed struggle.
4. Persons may have been threatened by members of PCP-SL, and have chosen to "disappear" from their place of origin in order to avoid reprisals and to protect their lives
5. Persons may have died in armed clashes with the police and not been identified."

Information provided by the Political-Military Commander of
National Security Sub-Zone No.5

68. The Political-Military Commander in Ayacucho, Brigadier-General Mori Orzo, explained that all persons suspected of terrorist activities who had been arrested by the military or police forces under his command had been handed over to the Investigatory Police (PIP) who were responsible for pursuing the necessary inquiries for criminal proceedings. All rights granted to detainees under the Constitution and the relevant laws were respected by the Investigatory Police in the emergency zone. Furthermore, all reports of disappearances in the area under his command were immediately checked by the military and police forces if they were alleged to have been involved; it should be kept in mind that many reports and testimonies contained deliberately false information intended to mislead the authorities and many disappearances had been reported only to cover persons who had joined the ranks of Sendero Luminoso.

69. A number of persons suspected of collaboration with Sendero Luminoso were also being captured by "civil defence" patrols. According to his instructions these persons had to be handed over to the army immediately and subsequently to the Investigatory Police. The "civil defence" system, guided and assisted by the army, had thus helped to reduce the activities of Sendero Luminoso.

70. The civil authorities in the area under his command continued to function independently. There was full co-operation between the different forces of public order under his command and the representatives of the Office of the Attorney-General and of the judiciary. Whenever allegations were made that army or police forces under his command were responsible for disappearances immediate measures were taken to investigate them. However, all such allegations had proved to be unfounded. When the members of the mission informed Brigadier-General Mori Orzo of the large number of complaints received in that regard and requested him personally to look into five selected cases which had occurred recently, he consented at first but later sent a message stating that he was not entitled to do so.

Information provided by the Attorney-General and by public prosecutors

71. A very important part of the visit was devoted to conversations with the Attorney-General (Fiscal de la Nación) who heads the Office of the Attorney-General (Ministerio Público) and the hierarchically organized system of public prosecutors. His office, created by the 1979 Constitution, enjoys full autonomy and does not belong to the legislative, executive or judicial branches of the State. His views cannot therefore be considered as the position of the Government proper but provide most valuable insight into the investigatory process since he and the public prosecutors are the official organs for the receipt of complaints on disappearances, conduct the necessary investigations and initiate the appropriate criminal proceedings.

72. It is this institution which has, at least theoretically, the power and competence to guarantee the enjoyment of all civil rights as described earlier in paragraphs 26 and 27 of the present report.^{17/} The members of the mission decided, therefore, to meet the Attorney-General and the Secretary General of the Office of the Attorney-General in Lima, and also their respective predecessors, under whose term of office most of the complaints had been received, as well as the superior and provincial prosecutors in Ayacucho.

73. The Attorney General described the procedures used by the prosecutors in investigating cases of disappearances, the powers and resources granted to them as well as the manifold difficulties they encountered in carrying out their investigations. He regretted in particular that only 30 per cent of the qualified staff needed was actually available and that over half of the prosecutors only held provisional appointments.

74. In the emergency zone practically all prosecutors had been subject to harassment and threats on the part of both Sendero Luminoso and the armed forces. One prosecutor had been assassinated and even he himself had been threatened. The psychological climate in the emergency zone was such that it made it even more difficult to obtain clear evidence and full proof of the allegations made.

75. Another difficulty was that the Investigatory Police (PIP) responsible for investigating the allegations under the prosecutors' direction, was placed under the orders of the Military-Political Commander. In practice, PIP had mostly reported negative results following their investigations.

76. The prosecutors had in general never been allowed to enter barracks of the armed forces. Since many relatives alleged that the missing persons had been taken to the barracks after their arrest, investigations into these cases could generally proceed no further from that point.^{18/} The Attorney-General added that the suspension of full liberties in the emergency zone in no way affected the right of the prosecutors to inspect official prisons even when they were situated in barracks.^{19/} Although there were strong indications of excesses by the armed forces and the police, the Attorney-General was convinced that many persons whose disappearance had been reported by their families had in fact joined the ranks of Sendero Luminoso.

77. The Attorney-General also provided the members of the mission with a copy of the written instructions he had given to the prosecutors concerning the handling of complaints of enforced or involuntary disappearances. In addition to directives of a mainly administrative nature, the instructions specify that: "In no case will the police investigations suspend the investigations and collection of evidence which is to be carried out by the representative of the Office of the

Attorney-General". Any written communication by the prosecutors with other authorities must state that the information requested is within the power conferred by the Organizational Law on the Office of the Attorney-General and must indicate a reasonable time limit for the reply. If no reply is forthcoming within the period indicated, the request is to be repeated on two successive occasions, stressing that the authorities are under a duty to reply. If there is no reply to the communications the provincial prosecutor can proceed to formulate a corresponding complaint for violation of and resistance to lawful authority, bringing the relevant facts and statements of law to the notice of the Attorney-General.

78. The former Attorney General, who headed the Office of the Attorney-General from May 1984 to March 1985, presented the members of the Working Group with a similar picture as to the probable responsibilities for the disappearances and the reasons for the lack of progress in official investigations. He, too, deplored the lack of co-operation the prosecutors had received from the armed forces, the Investigatory Police and the Civil Guard, who were all under the orders of the Political-Military Command of the emergency zone.

79. He also emphasized that many prosecutors had suffered threats from terrorist organizations or from the army and police, which had induced some of them not to pursue the investigations with the necessary vigour. For that reason he had in certain instances designated ad hoc prosecutors and charges of neglect of duty had been filed against some officials. The climate of terror had similarly adverse effects on the judiciary.

80. During their stay in Ayacucho the members of the mission also met the doyen of the senior prosecutor (Fiscal Superior Decano) together with three senior prosecutors of the Department of Ayacucho who reiterated in essence the above mentioned difficulties. The doyen of the senior prosecutors invited the members of the mission to acquaint themselves with the steps taken by the prosecutors of the department on complaints regarding disappearances. The material presented in this connection could, of course, not be thoroughly examined, but the members noted that, in the Province of Huamanga in which the city of Ayacucho is situated and which is only one of the six provinces of the Department of Ayacucho, a total of 1,247 complaints had been received and processed during the period from 1983 to 1985. Of these 1,247 missing persons, only 91 have appeared so far.

81. The Prosecutor of Huanta told the members of the mission that he had been able to ascertain that a number of persons reported missing had been detained in the city's stadium ^{20/} which housed the barracks of the navy detachment based in Huanta. Some of these detainees had later been liberated and he provided the members with the names of the persons of whom he knew.

82. At the end of their visit the Attorney-General provided the members of the Working Group with a compilation of computerized information concerning 500 cases of disappearances which had been brought before the prosecutors, showing the official steps taken for each case as well as the results obtained. The Attorney-General promised to send the Group another set of 600 cases in due course; however, they had not arrived at the time of the adoption of the present report.

83. An analysis of the first set of 500 cases reveals that the following investigatory measures have been taken by the Attorney General:

(a) Inquiries to establish the legal situation of the missing person; whether he/she was on trial by a local judge and whether he/she was detained in local police premises or in one of the official detention centres. In some cases, a request for information on the legal situation was sent to the Political-Military Commander of the emergency zone. (In some cases, two reminders were sent, but no reply from the Commander appears to have been received.)

(b) Requests for information from the Director of the General Electoral Roll Office in order to establish whether the person concerned had registered for or voted in the national elections held on 14 April 1985.

Information provided by the President of the Supreme Court
and by members of the judiciary

84. The President of the Supreme Court gave the members of the Working Group a detailed explanation of the habeas corpus procedure in Peru. That procedure is described in paragraph 25 of the present report.

85. He further stressed that for any criminal proceedings in relation to disappearances the judicial system in Peru required that the prosecutors file a case against a clearly specified person. Whenever military personnel were involved the question of the competence of either civil or military jurisdiction had to be decided upon. In that connection he mentioned a recent case that had come before the Supreme Court which had ruled in favour of military jurisdiction. In this ruling relating to the discovery of mass graves in Pucayacu, the Supreme Court had decided on 10 April 1985 that:

"Armed forces, by operating in an area under a state of emergency, do so on permanent duty, for which reason the conduct involved in the accusation is an offence committed on official duty, since it was occasioned as a result of or in the exercise of military duties".

In the consideranda, the ruling states, inter alia, that:

"Offences committed on official duty are not confined simply to offences which concern or affect the exercise of the function discharged by the serviceman, but also cover all those which have a bearing or an effect on the functions or activities of every serviceman by the very fact that he belongs to the armed forces, since a nexus of causality between the offence committed and the function is not required: incidental occurrence is sufficient".

VI. HUMAN RIGHTS ORGANIZATIONS, RELATIVES AND THEIR ASSOCIATIONS AND OTHER SOURCES OF REPORTS ON ENFORCED OR INVOLUNTARY DISAPPEARANCES AND THE ROLE OF THE PRESS

86. The first reports on enforced or involuntary disappearances in Peru which reached the Working Group in the autumn of 1983 came from the Peruvian Human Rights Association (Asociación Pro Derechos Humanos (APRODEH)). In the following months two other Peruvian human rights organizations, namely the National Commission on Human Rights (Comisión Nacional de Derechos Humanos (CONADEH)) and the Episcopal Social Action Commission (Asociación Episcopal de Acción Social (CEAS)) of the Roman Catholic Church, also provided the Working Group, both orally and in writing, with reports on cases of disappearance and information of a general nature on the problem 21/.

87. During their visit to Peru, the two members of the mission had further occasion to interview several representatives of these organizations. The two members also met many individual witnesses and relatives of missing persons some of whom were introduced by these organizations while others had approached the mission independently.

88. In the course of 1985 relatives of missing persons had also started to organize themselves in family associations following the example of other countries where the problem of disappearances exists. The mission's members met representatives of two such associations, namely the Committee for Disappeared-Detainees' Relatives who Have Taken Refuge in Lima (Comité de Familiares de Detenidos Desaparecidos Refugiados en Lima (COFADER)), which was constituted in January 1985 and maintains offices in Huancavelica and Huanta and the National Association of Relatives of Abducted Persons and Disappeared Detainees in the Zones under a State of Emergency in Peru (Asociación Nacional de los Familiares de Secuestrados y Detenidos Desaparecidos en las Zonas Declaradas en Estado de Emergencia del Perú (ANFASEP)) which has its headquarters in Ayacucho. These associations brought so many of their members before the Working Group that they had to be asked to select the most representative cases for oral presentation.

89. Contacts with the two members were also sought by other institutions not dealing directly with human rights but concerned with the fate of some of their members who had disappeared. The two members of the

Working Group thus received representatives of the Agrarian Leagues of the Department of Ayacucho and the Evangelical Church as well as representatives of the Workers' Association of Health Region XII/A (Ayacucho). They were also provided with information of a general nature and reports on cases of disappearance by the University of Huamanga, which is situated in Ayacucho City, and its Legal Assistance Service. Information of a general nature was also received from the Peruvian Centre for Development Studies and Promotion (Centro de Estudios y Promoción del Desarrollo (DESCO)), from the Andean Commission of Jurists (Comisión Andina de Juristas), from members of the Bar Associations of Lima and Ayacucho and prominent representatives of the media and academic life.

90. In general, the members of the mission were satisfied with the credibility of the testimonies received before and during the mission. They were also able to observe that the human rights organizations in Peru have been able to give effective legal assistance and moral support to a great number of families of missing persons despite considerable difficulties of access to remote areas in the emergency zone. They have generally provided the Working Group with well documented information. It was the impression of the Working Group that the organizations concerned with disappearances contacted by the Group do not as such pursue any political objective, although some of their members in their individual capacities belong to various political parties or play a role in the nation's political life.

91. It should be noted that among the total number of cases of disappearances transmitted to the Government so far, a certain number were received from Amnesty International and some from Pax Romana. The two members of the Working Group were, however, not contacted by representatives of these organizations during their visit to Peru.

92. Generally, the question of the observance of human rights and more particularly, the problem of enforced or involuntary disappearances are highly politicized in Peru, which in effect does not facilitate either their understanding or their eventual solution. The politicization of the issue is illustrated by the intense and at times sensationalist coverage which human rights problems in the emergency zone receive in the Peruvian press. The high number of daily newspapers of different political persuasions in Lima and Ayacucho, as well as of important weekly periodicals, clearly demonstrate the active role of the press which reported extensively about the activities of the two members of the Working Group during their visit to Peru; a huge crowd of journalists accompanied or awaited the members at most of their appointments. The Working Group noted with interest a number of important reports and commentaries on disappearances in the Peruvian press, but none of the cases it has transmitted to the Government is based on press reports.

VII. ECONOMIC AND SOCIAL CONSEQUENCES

93. The following paragraphs represent an attempt to relay some observations made and testimonies received during the visit which might illustrate the extent to which terror and violence in the emergency area have affected the population who, even before guerrilla insurgency and anti-terrorist action, had to struggle against widespread poverty, illiteracy, and exploitation 22/.

94. As usual in such circumstances, those who are suffering most are the poorest and weakest segments of the population - tiny rural communities in remote areas, children, women and the elderly. Several witnesses spoke of communities in the emergency zone which, after having suffered all kinds of harrassment and terror from Sendero Luminoso, including the assassination of their leaders and authorities, finally succumbed to terrorist pressure and joined the guerrilla forces or supported them. Others resisted, were besieged, hindered in the pursuit of their daily occupations, in particular when looking after their crops or cattle, or were simply killed. When the authorities began to fight terrorism seriously, the same communities were either severely punished for having supported Sendero Luminoso or got caught between the two fronts. A number of those who died may appear on the list of missing persons since their death in combat or as a result of attacks against communities or isolated peasants have rarely ever been acknowledged. Others were abducted or arrested and never reappeared.

95. Thousands of peasants threatened by death and violence had to leave their communities and homes. They took refuge in the more populated valleys and in suburban areas of the cities in the emergency zone or migrated to other regions, particularly that of Lima, where they live in the misery of shantytowns without jobs and resources, exposed to crime and without hope for the future. In moving they left behind their entire basis for subsistence, becoming dependent on the already very scarce sources of social assistance and, thus, even more vulnerable to either joining Sendero Luminoso or being accused of supporting them.

96. Many of these uprooted peasants joined the "civil defence" system (see para. 19). For many this was the only possibility of physical survival especially when they were forced to leave their land, when their homes were destroyed or when family bread-winners had disappeared or been killed. According to the explanations provided to the members of the mission by the military authorities, the armed forces encouraged the creation of "civil defence" groups and instructed them to concentrate in strategic localities, often close to military barracks or detachments, where they could be afforded military protection and guidance as to their patrolling duties. In some such places thousands of peasants 23/ from different communities, including whole families and hundreds of children, have concentrated and are now living in the most primitive dwellings and on minimal food rations provided by the armed forces or obtained by travelling periodically to their own land where they have left their crops and livestock.

97. At the invitation of the Political Military Commander, the members of the mission travelled to a "civil defence" camp at Acco where they could observe some 200 uprooted peasants living in straw huts without adequate food supplies, sanitary installations, health services and schools for their many children. Several of these peasants told members of the Working Group that their relatives had disappeared and that they would need official assistance to escape their present miserable conditions.

98. The plight of the population is both apparent and pathetic. There are thousands of orphaned children, widows or wives with large families whose bread winners have disappeared, and mothers who have lost their children. Only a small proportion of the orphaned children have found shelter in centres established by charitable organizations, the Catholic Church and other religious denominations. The members of the Working Group visited the Puericulturio Children's Centre which is privately run and houses some 160 children, and a Catholic Church in Ayacucho where some 300 persons are served with a daily meal which is their only means of subsistence.

99. The plight of families of persons who have disappeared is particularly serious. In the hope of finding arrested relatives, many of them wander from prison to prison and from barracks to barracks covering many kilometres on foot, carrying their children, whom they have no means of feeding. They try to obtain information on their loved ones by questioning anyone, in particular persons whom they know to have been arrested and released. Often they try to make their way to places where mass graves are known to exist, but they are not always successful, since the military authorities have prohibited all access to such places and there is a risk that they themselves will be arrested. Some have been able to identify the bodies of missing relatives, following legal action to obtain court orders for the exhumation of bodies buried in mass graves. Others have found unburied bodies in various places.

100. The fact that they do not know what has happened to their loved ones increases the anxiety of relatives; their nagging uncertainty, their dedication to an arduous search or their hopes prevent them from rebuilding their lives. The most desperate among them feel that they have nothing more to lose. Many have lost confidence in the State and its institutions. Many will never be able to reintegrate in society; but their state of despair and helplessness is only one of the tragic dimensions of the violence which dominates this part of the country.

VIII. CONCLUDING OBSERVATIONS

101. The Working Group thanks the Government of Peru and appreciates its invitation to come and visit the country, during what are, no doubt, trying times, and the measure of co-operation that the members of the mission received.

102. The Working Group is not a court of law and hence is not called upon to establish the guilt or innocence of individuals in relation to specific allegations. Instead, in addition to clarifying cases, it is called upon, at a higher level of abstraction, to establish what the mechanics are and who is involved in a given question of enforced or involuntary disappearances, with a view to informing the Commission accordingly. Therefore, the standards of evidence to be met by prosecutors and to be applied by judges in criminal cases do not come into play. Nonetheless, the Group is bound to evaluate any situation of disappearances in the light of all material and testimonies available to it after carefully weighing their veracity.

103. The situation of Peru is not an enviable one. In addition to climatic disasters and a heavily mortgaged economy, the country has been beset by a brutal guerrilla organization. Under the circumstances, the country requires extraordinary leadership, deeply committed to human rights, to wage an effective fight against Sendero Luminoso's terror without resorting to counter-terror. That task is in any event a formidable one.

104. Ironically, Sendero Luminoso resorted to actual use of violence for the first time on the eve of democratic government following 12 years of military rule over the country. There can be no doubt that since then a great many disappearances have taken place in Peru. Indeed, the vast majority of cases denounced to the Attorney-General in the course of the ensuing five years would seem to be genuine cases of missing persons, even if one deducts the number of cases where people listed as missing evidently registered on the Peruvian electoral roll after the alleged date of disappearance.

105. There is considerable evidence that Sendero Luminoso has abducted people, although mainly with a view to forcing them to join its ranks and less as a method of reprisal. Generally, disappearances do not seem to figure prominently among the methods of elimination Sendero has applied. However, the attraction the movement is shown to have, particularly for the young, it seems likely that a number of people listed as missing may in reality have enrolled with Sendero Luminoso voluntarily.

106. It appears from the overwhelming number of testimonies and statements from a wide variety of sources that the largest proportion of disappearances occurred in the course of the counter-insurgency campaign undertaken by the various branches of the armed forces and the police since the end of 1982. The graph on page 16 seems to underscore this to the extent that it shows a marked increase in the number of disappearances following the advent of the military in the fight against terrorism.

107. A state of emergency has been declared in Peru, formally suspending four rights and freedoms from which derogation may indeed be made under the terms of the International Covenant on Civil and Political Rights, to which Peru is a party. The area, to which the state of emergency applies in particular, centers on Ayacucho City and encompasses all provinces where Senderistas have spread their subversive activities. Under the law, the Political-Military Command in the area has taken full control not only over all armed forces and the entire police, but also over all civil authorities as well. From there only a slim line of authority runs to the Government in Lima. Thus, as of 1982 the armed forces were granted a great deal of latitude in fighting Sendero Luminoso and in restoring public order as they saw fit, while their actions were no longer subject to ordinary democratic controls. As a result the stage was set for a situation where disappearances and concomitant violations of human rights were almost bound to take place sooner or later.

108. Relatives of missing persons have in most cases turned to the authorities and denounced the disappearance; yet to little avail. Indeed, some sort of institutional paralysis in matters pertaining to the protection of human rights seems to have settled on the emergency zone. Prosecutors are being criticized for not carrying out proper investigations to identify the responsible parties or ensure the release of persons believed to be detained. Prosecutors, for their part, maintain that their efforts are frustrated by the military and police authorities and that they lack proper resources. They further point to the fact that the Investigatory Police (PIP), which is supposed to assist them in their work, is placed under military command. The military authorities contend that they are not responsible for disappearances and remain silent about their actions under the state of emergency. The judiciary refers all cases involving military personnel to military courts. It appears, therefore, that theoretically a solid system of law, which when strictly applied ought to ensure protection of human rights, is not made to function properly. As a result, few of those who have disappeared are actually acknowledged to have been arrested and there are no known cases of those thought responsible having been convicted.

109. Human rights organizations and family associations left a favourable impression, generally having provided the mission and the Working Group with solid and well-documented information. Despite the climate of fear that is said to have permeated the Ayacucho area, hundreds of witnesses openly came to see the mission's members, invariably under the eyes of the military. Amazing too was the unbridled freedom of the media, which reported extensively on the mission's activities. How well aware Peruvians are of what happens around Ayacucho became clear in the many conversations with people from different segments of Peru's political, legal, religious and intellectual life.

110. The question of violence in Peru reflects a serious and complex interrelationship of socio-economic and political factors which are a legacy from centuries ago. In Ayacucho, the severe underdevelopment of the area has been a major contributing factor. It would appear,

therefore, that only through a comprehensive development strategy can one hope to render the social fabric of the affected population more resilient in the long run. Then perhaps people would better withstand the perverting influence of violent movements and lead a normal life at last.

111. In the short term, it would occur to the members of the mission that a number of measures could be considered that might alleviate some of the aspects of the problem of disappearances. First of all, security and personal safety seem of the essence, so that the people in the towns and countryside will no longer feel threatened by violence from all sides. Secondly, members of the police and the armed forces operating in the area should be taught the basic concepts of the Peruvian legal system and be trained in human rights matters. Thirdly, both the judiciary and the Office of the Attorney-General need to be effectively guaranteed the co-operation of all branches of the executive, notably the armed forces, as well as the resources to carry out their functions properly. Lastly, in the light of the acute hardship of the many relatives of disappeared people, it would appear that some form of relief programme is called for in order to ease their sorry lot.

112. Wherever violence erupts, many innocents are victimized. Ayacucho is no exception. Already steeped in misery due to poverty, disease and lack of opportunity, the Quechuan Indians, alienated from the rest of the nation, became caught in the vortex of the warring parties. Today, with so many husbands and sons dead or missing, traditionally large families have become destitute, living in pathetic conditions, without proper food or health care. The terror of which they have become the victims has left scars that will take generations to fade - if they ever do.

Notes

1/ Subsequent developments are reflected in the Working Group's main report, (E/CN.4/1986/18) in the sub-section on Peru

2/ Almost a household commodity in the area, dynamite was to become Sendero's principal weapon.

3/ The imposition of such "new morals" on communities appears to have consisted partly of a revival of ancient values and traditions, and partly to have been inspired by marxist models.

4/ A nation-wide state of emergency was proclaimed on 8 June 1984 for a duration of 30 days. At the time of the Working Group's visit a state of emergency was in force in the following provinces: In the Department of Ayacucho: Huamanga, Huanta, La Mar, Víctor Fajardo, Cangallo, Vilcashuaman and Huanca Sancos; in the Department of Huancavelica: Huancavelica, Tayacaja, Angaraes, Castrovirreyna, Churcampa, Acobamba and Huaytara; in the Department of Apurímac: Andahuaylas and Chincheros; in the Department of Huánuco: Marañón, Leoncio Prado, Huamalíes, Ambo, Dos de Mayo and Huánuco; in the Department of Pasco: Daniel Carrión and Pasco; and in the Department of San Martín: Tocache.

5/ The Peruvian police forces are composed of the Civil Guard (Guardia Civil), the Republican Guard (Guardia Republicana) and the Investigatory Police (Policía de Investigaciones - PIP). The Civil Guard is a regular uniformed police force with two specialized units, namely the anti-subversion unit known as "Sinchis" and a riot control unit. The Republican Guard is mainly responsible for border control and the Peruvian Investigatory Police is the plainclothes intelligence police department in charge of the prevention and investigation of legal offences. There are other specialized police units which have, however, not been mentioned in connection with disappearances.

6/ The Working Group met the Commander of military zone No.5, Brigadier-General Wilfredo Mori Orzo, at his headquarters in Ayacucho and all observations with regard to the military zone in the present report, therefore, refer to areas under his command.

7/ Particularly in 1984 and 1985, several mass graves were uncovered. The members of the Working Group received oral statements and numerous press cuttings about the discovery of many bodies buried in mass graves, for example in Pucayacu (where three graves with 49 bodies were found), in Capilampa (27 bodies, of which 10 were unburied and 17 were in two graves), 13 kilometres from Huanta (two graves with 13 bodies), in Urubamba (7 graves with 45 bodies), in Leislespampa (15 bodies), in La Vega (13 bodies), in Tule (13 bodies), etc. The existence of many mass graves was also mentioned by officials interviewed in the emergency area.

8/ Other expressions used in this connection were: "Montoneros" or "Rondas campesinas" (peasant patrols), which have however led to misunderstandings, since they are also used for other types of operations in entirely different contexts.

9/ The weapons most frequently used by "civil defence" patrols are sticks, knives, hatchets and slings.

10/ The broad definition of the term "terrorist" in this law is also a matter of concern to human rights organizations, which have pointed out that certain provisions of the law, such as art. 7 - under which speaking out publicly in favour of a person convicted of responsibility for terrorist acts is considered to be terrorism - may be used to punish someone merely for criticizing a judicial decision.

11/ Interview with Brigadier General Mori Orzo.

12/ The reports received by the Working Group before their visit very frequently contained similar case descriptions.

13/ The Working Group has in its files a number of reports where relatives or their lawyers were even allowed to send food or see detainees during the first days of their detention.

14/ Among the 872 cases transmitted by the Working Group to the Government, only six contain an indication that a writ of habeas corpus has been filed.

15/ For an excerpt from the relevant parts of a ruling by the Supreme Court see para. 85.

16/ A detailed examination of the information in the electoral registration forms received from the Government showed that only in 13 cases the name, date of birth and profession, as provided by the source, coincided with the information contained in the electoral registration form. The Working Group transmitted the information given by the Government to the sources. Only three of the sources have so far replied indicating that in five cases the electoral identity card provided by the Government did not belong to the same person, given the clear differences in the name, the photo, the age and/or the profession between the person referred to in the card and the missing person. In two cases, the sources reported that the person was no longer considered to have disappeared and, therefore, the cases were clarified. In four cases, the sources reported that inquiries had been initiated to establish whether the person was still missing.

17/ The Office of the Attorney-General combines the function of both public prosecutor and ombudsman. In the latter capacity it has to ensure that all civil and political rights of citizens granted by the Constitution and the law are respected by the authorities.

18/ In this connection, members were told by the predecessor of the current Attorney-General that the prosecutors could only officially enter military installations when in possession of a warrant duly signed by a judge. Such warrants could, however, only be obtained after the initiation of criminal proceedings against a specified person.

19/ Brigadier-General Mori stated in this regard that no official prisons were established in the barracks of the armed forces under his command.

20/ At the time of the visit, the Huanta stadium was no longer used as a navy barracks and had been returned to its original use; it still serves as a heliport for the Navy.

21/ APRODEH, CEAS and CONADEH, together with human rights groups in Puno, Cusco, Ica, Ayacucho, Ccaccamarca, the Social Justice Commission of Chimbote, the Committee of Relatives of the Martyrs of Uchuraccay, the Human Rights Committee of the Union of the Republic (Sindicato de la República (CODDEH)), the Agrarian Federation of Peru and the Support Group for the Latin American Federation of Associations of Relatives of Disappeared Detainees (Federación Latinoamericana de Asociaciones de Familiares de Detenidos Desaparecidos (FEDEFAM), have in the mean-time established National Co-ordination in Matters of Human Rights.

22/ The per capita income for Peru as a whole was most recently listed as \$US 634 (source: National Institute of Statistics, 1984). The most recent estimate for the per capita income for the Department of Ayacucho (1981) came to a little more than one third of the national figure for that year. In the entire area under a state of emergency, 70 per cent of the population is employed in agriculture, although less than 5 per cent of the land is arable there; infant mortality ranges from 126 (Department of San Martín) to 227 (Department of Huancavelica) per thousand newly born children; the percentage of illiterates ranges from 22.4 per cent (Department of San Martín) to 50 per cent (Department of Apurímac). Only 250 medical doctors are registered in the whole area extending over 196,146.81 square kilometres and inhabited by 2,453,100 persons. In the Department of Apurimac only 11 medical doctors are registered (source: National Institute of Statistics and Centre for Development Studies and Promotion).

23/ One witness stated that there were approximately 3,000 peasants in Pacasare belonging to "civil defence" groups, some 2,800 in San José de Ceje and about 1,200 in the district of Tambo.