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**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



# Report of the Mission to Peru

17 - 22 November 2020

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## I. Introduction

1. From 17 to 22 November 2020, upon an invitation from the Government of Peru, the Office of the United Nations High Commissioner for Human Rights (OHCHR) conducted a mission to the Metropolitan District of Lima to gather information about the human rights situation in the context of the protests that occurred between 9 and 15 November.
2. During its mission, OHCHR held meetings with the country's highest authorities, including the President of the Republic, Francisco Sagasti, the Minister of Foreign Affairs, Elizabeth Astete, the Minister of Justice and Human Rights, Eduardo Vega, the then Minister of the Interior, Rubén Vargas, officials from the Ministry of Women and Vulnerable Populations the Prosecutor of the Nation, Zoraida Ávalos, the President of Congress, Mirtha Vásquez, the President of the Justice and Human Rights Commission of Congress, Leslye Lazo, as well as with Members of Congress, representatives of the Judiciary and senior members of the Peruvian National Police (PNP or “the Police”).
3. OHCHR conducted 113 interviews, with victims of alleged human rights violations, witnesses, members of the Police, legal representatives of victims and volunteer lawyers, civil society organisations and actors, including human rights defenders, journalists' associations, student federations, firefighters and volunteer brigadiers, staff of the General Directorate of Public Defence and Access to Justice, the Ombudsman's Office, the National Mechanism for the Prevention of Torture and municipal authorities. OHCHR visited Police stations and several hospitals where it interviewed persons injured in the context of the protests, as well as medical personnel. Victims and witnesses were interviewed individually, with strict compliance with the principles of protection of victims and their families, including, when requested, the confidentiality of their identity or shared information.
4. OHCHR analyzed a considerable amount of information, including information provided by victims, their families, and authorities, audio-visual records and other public information. The information obtained was assessed in light of international human rights law applicable to the Peruvian State, considering also national legislation. OHCHR exercised due diligence to assess the credibility and reliability of all sources and verified the information gathered to ensure its validity.
5. In particular, OHCHR has documented that in the context of the protests that occurred between 9 and 15 November 2020, the Police used unnecessary and excessive force that resulted in two deaths, while at least 200 people were injured. OHCHR also identified a pattern of arbitrary arrests and detentions in connection with the protests, including by unidentified plainclothes Police, as well as violations of due process, cases of ill-treatment and attacks on the right of peaceful assembly, freedom of expression and the right to defend human rights.
6. OHCHR takes note of the measures announced or adopted by the Government and the commitment expressed to ensure accountability for the human rights violations that occurred in November 2020 and to prevent their recurrence. OHCHR calls for the enjoyment and promotion of the rights to truth, justice and reparation, including guarantees of non-recurrence. OHCHR remains available to assist the Peruvian State in addressing the issues raised in this report.
7. OHCHR thanks the State of Peru for its extensive cooperation, for the frank dialogue held and for the information provided. It also thanks the *Coordinadora Nacional de Derechos Humanos*, a civil society coalition, and the United Nations Country Team for their support during the mission.

## II. Context

8. On 9 November, Congress approved the second motion of vacancy of the then President Martín Vizcarra on the grounds of permanent moral incapacity. The constitutionality of the vacancy due to permanent moral incapacity had previously been questioned by President Vizcarra himself before the Constitutional Court. On 10 November, following the application of the regime of succession

established in the Constitution, the then President of Congress, Manuel Merino, was sworn in as interim President of the Republic.

9. These events triggered protests which not only challenged the legitimacy of the interim presidency of Manuel Merino, but also expressed other causes of social discontent. Gathering masses across the country, the demonstrations were the largest in at least 20 years. In particular, many young people participated in protests on 10, 12 and 14 November.
10. On 12 November, OHCHR issued a public statement urging the Peruvian authorities to guarantee the right of peaceful assembly, following the first allegations of human rights violations<sup>1</sup>. On 13 November, the United Nations system in Peru expressed its deep concern about the actions of the law enforcement agencies in the context of the protests over the previous four days<sup>2</sup>. On the night of 14 to 15 November, Police repression of the protests culminated in two deaths and a large number of injuries.
11. On 15 November, in reaction to the events of the previous night, the board of Congressional spokespersons called on President Merino to step down, and he resigned from office. On 16 November, Congress elected as its President Francisco Sagasti who, following the succession regime established in the Constitution, was sworn in as President of the Republic on 17 November.

### III. Main findings

#### A. Use of force and violations of the rights to life and physical integrity

##### 1. Context of the use of force in Peru

12. In recent years, there have been repeated instances of violations of the standards on the use of force by law enforcement officials, particularly in the context of social conflict, but also in the context of the pandemic. In 2020, the most serious incidents occurred at Castro Castro prison in Lima, on 27 April, which left nine inmates dead<sup>3</sup>, and the protest at an oil site in Bretaña, on 8 August, in which three indigenous Kukama Kukamiria people were killed<sup>4</sup>, amongst other cases.
13. There are contradictory trends in the application of international standards at the regulatory level. On the one hand, Law No. 30151 of January 2014 modified the Criminal Code, introducing an *ex ante* exemption from liability for armed forces and Police personnel who, in the performance of their constitutional duty and through the use of their weapons, cause injury or death<sup>5</sup>. On the other hand, the adoption in August 2015 of the Law on the Use of Force (Legislative Decree No 1186) and its regulations, elaborated in a participatory manner and with technical assistance from OHCHR, was recognized as a step forward, as well as the Manual on Human Rights Applied to the Police Function (2018).
14. The most recent change, however, represents a clear step backwards. In March 2020, the Police Protection Act (Law No 31012) not only reiterated the aforementioned exemption from criminal liability, but also established the prohibition of issuing warrants of preliminary judicial detention or pre-trial detention against Police officers under investigation for injuries or deaths caused by them. It also expressly repealed the provisions of the Law on the Use of Force which had established the principle of proportionality in the use of force by Police officer. The repeal of the principle of proportionality

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<sup>1</sup><https://acnudh.org/peru-debe-garantizar-el-derecho-a-la-reunion-pacifica-urgio-onu-derechos-humanos/>

<sup>2</sup><https://peru.un.org/es/100615-onu-peru-manifiesta-preocupacion-sobre-eventos-ocurridos-durante-las-protestas/>

<sup>3</sup><https://acnudh.org/covid-19-profundiza-crisis-penitenciaria-en-peru-alerta-onu-derechos-humanos/>

<sup>4</sup>The incident at Bretaña was the subject of non-public communications from OHCHR, addressed to the relevant Peruvian authorities.

<sup>5</sup><https://acnudh.org/peru-acnudh-manifiesta-preocupacion-sobre-ley-que-regula-uso-de-armas-por-parte-de-fuerzas-armadas-y-de-seguridad/>

contravenes applicable international standards<sup>6</sup>. OHCHR considers that the Law on Police Protection poses serious obstacles to the fight against impunity, accountability and access to justice<sup>7</sup>.

## 2. Principal findings regarding the use of force

15. OHCHR has documented that in the context of the protests which occurred between 9 and 15 November 2020, the Police did not comply with international standards (and even national standards<sup>8</sup>) according to which any use of force must comply with the fundamental principles of legality, necessity, proportionality, precaution and non-discrimination.
16. According to the information gathered, the protests took place in different parts of Lima and were predominantly peaceful, although there were violent incidents by some protesters who threw objects such as paving stones from roads and parks, as well as fireworks. The PNP resorted to the use of force on 10, 12 and, particularly, 14 November, without distinguishing between peaceful demonstrators and those who allegedly committed violence, with the apparent aim of dispersing the protests or preventing those who were protesting from reaching certain points in the center of Lima. However, according to international standards, a gathering can only be dispersed in exceptional cases; when the decision to disperse a gathering has already been made, the use of force should in principle be avoided; and if it cannot be avoided, only the minimum necessary force can be used, directed against a specific person or group participating in the violence or threatening to do so<sup>9</sup>.
17. According to the information gathered, the PNP used less-lethal weapons in circumstances where it was not necessary, as there were no grounds to justify it, and without sufficient prior recourse to communication and conflict reduction techniques, as also required by international standards<sup>10</sup> and national norms<sup>11</sup>. One of the injured youths interviewed by OHCHR summarized the situation by saying: *“We didn't think the Police would shoot at us. At no time did we represent a danger to the Police”*.
18. Based on interviews with victims and witnesses, as well as available audio-visual material, there are indications that the Police fired pellets from 12-gauge shotguns and tear gas canisters directly into crowds, at close range, without respecting the proper shape or orientation of the shot, and, in some cases, aiming at the upper half of bodies and impacting the head, neck and torso of people.
19. Tear gas canisters were fired in large quantities and disproportionately, including from heights, in sectors where there were large numbers of people congregated, who due to the closure of streets did not always have a clear evacuation route. This sometimes also affected passers-by and people living and working in those areas. According to accounts collected, the unnecessary and excessive use of tear gas had a differentiated impact on certain groups of the population, including children (with young children subsequently requiring medical attention), adolescents as well as persons with disabilities and older persons who experienced great difficulty in leaving the affected areas. OHCHR recalls that, according to international standards, tear gas should only be used as a last resort, following a verbal warning and giving participants in the gathering the opportunity to disperse<sup>12</sup>.
20. OHCHR documented two cases of protesters killed on 14 November. According to the autopsy certificate, Jack Bryan Pintado Sánchez (22) died as a result of “ten penetrating wounds from firearm projectiles (pellets)” to his head, neck, thorax and arm. He was taken to the Guillermo Almenara National Hospital, where he arrived at 20:18 hours with no vital signs. According to the general death certificate, Inti Sotelo Camargo (24) died from “penetrating wound to the chest from a firearm

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<sup>6</sup>Code of Conduct for Law Enforcement Officials, Article 3.

<sup>7</sup><https://acnudh.org/peru-nueva-ley-de-proteccion-policia-abre-espacios-de-impunidad-alerta-onu-derechos-humanos/>

<sup>8</sup>Manual of Procedures for Operations to Maintain and Restore Public Order (2016).

<sup>9</sup>Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principle 13; and A/HRC/26/36, para. 75.

<sup>10</sup>CCPR/C/GC/37, para. 78.

<sup>11</sup>Manual of Human Rights Applied to the Police Function, pp. 95-100.

<sup>12</sup>United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement, para. 7.3.7.

projectile”. He was taken to Miguel Grau National Hospital, where he arrived at 22:02 hours with no vital signs.

21. OHCHR received information regarding more than 200 injured individuals who received first aid and/or hospital care in the context of the protests. This includes cases of people injured by pellets were documented: Jon Cordero Morales (24; wounded in the spine), Oswaldo Palominos (20; wounded in the chest), Fernando Nicho Muñoz (22; wounded in the eye), Anna Paula Olivares Mesa (27; wounded in the arm), Nelson Acosta (28; wounded in the arm), César Sánchez Rojas (32; wounded in the foot and with 11 other impacts on the body), Arturo Vilca (23; wounded in the neck and chest), Alexander Salas Condori (28; wounded in the chest), Samuel Giraldo Mucha (23; wounded in the tibia and hip), Bryan Pérez Castro (27; wounded in the hand). Other people were injured by glass marbles: Luis Aguilar Rodríguez (injured in the thoracic area), Percy Pérez (28; injured in the abdominal area), René Caqui (27; injured in the abdominal area). Journalist Alonso Balbuena Bellatín (28) was injured in his leg by the impact of a tear gas canister. OHCHR also documented two cases of injuries caused by the impact of an unidentified object: Albert Ñahui (22; severe head trauma) and André Rivero González (21; fractured skull). OHCHR also documented other cases of persons injured by the Police who wished to withhold their names for the purpose of this report for fear of reprisals, as well as attacks against other journalists, as mentioned below.
22. With respect to the ammunition for the 12-gauge shotguns, the PNP publicly stated that officers only used rubber pellets, which were intended for this type of procedure. However, according to information gathered<sup>13</sup> from medical personnel and based on X-rays, there are reasonable grounds to believe that the Police used pellets with a high metal content, as well as glass marbles. According to international standards, rubber-coated metal projectiles should be subject to the same standard as lethal ammunition, and as such they should never be used simply to disperse gatherings. Their use in the context of crowd control should be limited to specific individuals in circumstances where it is strictly necessary to address an imminent threat of death or serious injury<sup>14</sup>.
23. In a meeting with OHCHR on 20 November, the PNP high command maintained that the Police did not commit any human rights violations and that the injuries of the protesters may have been caused by other protesters. The PNP also presented this version to the media. This denial contradicts the victims’ accounts and material evidence. Moreover, only the protesters were injured by pellets and marbles, while injured policemen whom OHCHR also visited at the Police hospital had suffered contusions and fractures from blunt objects, not pellets or other ammunition.
24. The denial by the PNP high command contrasts with - and could weaken - the measures announced by the Government in terms of promotion of the rights to truth, justice and reparation, including guarantees of non-recurrence.

## **B. Violations of the right of peaceful assembly**

25. The right of peaceful assembly is recognized in the Constitution of Peru, which, however, provides that gatherings in public places and on public roads “require advance notice to the authority”. According to the information received by OHCHR, this notification requirement has been applied as a de facto authorization regime. However, according to international standards, where notification regimes persist in domestic law, these should not amount in practice to authorization systems<sup>15</sup>.
26. The Constitutional Court has explicitly recognized the right to protest<sup>16</sup>. It also declared unconstitutional certain articles of the municipal regulations that sought to establish an absolute prohibition on the

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<sup>13</sup>After the end of the mission, OHCHR collected information confirming that the projectiles that hit Inti Sotelo Camargo and Jack Bryan Pintado Sánchez were pellets that contain lead.

<sup>14</sup>*United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement*, para. 7.5.8; CCPR/C/GC/37, para. 88.

<sup>15</sup>CCPR/C/GC/37, para. 70-73.

<sup>16</sup>STC File No 0009-2018-PI/TC.

exercise of the right of peaceful assembly on public roads corresponding to the historic centre of Lima<sup>17</sup>, warning that this was neither necessary nor proportional.

27. The protests occurred within the context of the State of Emergency, declared in March 2020 (Supreme Decree No. 044-2020-PCM) with the aim of counteracting the effects of the COVID-19 pandemic, which limits the legitimate exercise of fundamental rights, including the right of peaceful assembly. Without prejudice to the health objectives, the State of Emergency has also served as a permanent tool of control of the civic space with extraordinary powers. This is in contrast to the international standard whereby States should not resort to continued suspension of the right of peaceful assembly if they can achieve their objectives by imposing restrictions only<sup>18</sup>.
28. OHCHR has documented that in the context of the demonstrations which took place between 9 and 15 November 2020, the Police failed to act in accordance with their obligations under international law, according to which States must facilitate the exercise of the right of peaceful assembly<sup>19</sup>.
29. Notwithstanding the above-mentioned ruling of the Constitutional Court, during the days of protests, the PNP maintained the general restriction on the movement of protesters in an area of Lima's historic centre —above all towards the Congress of the Republic, at the intersection of Piérola and Abancay avenues. However, according to international standards and jurisprudence, peaceful gatherings can, in principle, take place in all spaces to which the population has or should have access, such as public squares and streets. Therefore, the designation of perimeters around places such as courts, parliaments, places of historical importance or other official buildings as areas where gatherings cannot take place should be avoided, among other reasons, because these are public spaces<sup>20</sup>.
30. OHCHR collected information on restrictions to the exercise of the right of peaceful assembly, such as the closure of bridges, making it difficult for people to move to meeting points for protests; the installation of metal bars blocking public streets, creating a kind of fenced off or restricted area; and interference with related activities that are essential to the exercise of freedom of assembly, such as the planning, dissemination and use of flags and banners<sup>21</sup>. Allegations were received of power cuts and blockages or the reduction of the internet connection in areas where protests were taking place, which created difficulties for communication between participants as well as for real-time broadcasting, including by journalists.
31. According to information gathered by OHCHR, fences and street closures also resulted in the “kettling” or containment of people, a problematic practice from the perspective of international standards<sup>22</sup>. People did not always have a clear escape route from the high concentration of tear gas in “kettling” sites.
32. The State of Emergency and norms derived from it were used as justification for the arresting of protesters and/or their detention (*see pp. 34*) by the PNP for alleged violations of health regulations. These persons were transferred from the place of the assembly to Police stations to be subjected to administrative sanctions, in particular fines.

### **C. Deprivation of liberty, violations of due process and ill-treatment**

33. OHCHR interviewed 13 people who had been arrested in relation to the protests —seven men, five women and one adolescent. Based on these interviews, corroborated by visits to Police stations and

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<sup>17</sup>Sentence handed down by File No 4677-2004/TC on 7 December 2005, referring to Mayor's Decree No 060-2003 and Municipal Ordinance 062-MML.

<sup>18</sup>CCPR/C/GC/37, para. 96. CCPR/C/128/2, *Statement on derogations from the Covenant in connection with the COVID-19 pandemic*, para. 2.c.

<sup>19</sup>CCPR/C/GC/37, para. 8 and 24.

<sup>20</sup>Inter-American Commission on Human Rights, *Protest and Rights and Human Rights*, para. 72, and CCPR/C/GC/37, para. 55-56.

<sup>21</sup>CCPR/C/GC/37, para. 33-34.

<sup>22</sup>CCPR/C/GC/37, para. 84.

other sources, OHCHR was able to confirm that arbitrary arrests and detentions and violations of due process took place, as well as ill-treatment which, in some cases, may have amounted to acts of torture.

34. The *Coordinadora Nacional de Derechos Humanos* recorded 52 arrests from 10 to 14 November 2020, 31 of which occurred on 10 November. Lawyers that visited Police stations during the protests to offer *pro bono* legal assistance indicated to OHCHR that they were systematically informed by the Police that there were no detainees related to the protests. Although, according to the PNP, the arrests were supposedly made *in flagrante delicto*, with charges of offences against the public order, public disorder or resistance to authority, persons interviewed by OHCHR reported that they were arrested while exercising their right of peaceful protest or returning from the march. Some persons stated that they had not even participated in the protests. Other arrests were qualified in national law as “*retenciones*”, namely short-term detentions with the aim of establishing identity or identifying a person in the course of an investigation, or initiating administrative sanctions for the violation of health standards.
35. OHCHR received information about arrests made by Police officers who did not wear their names on their uniforms, were dressed in civilian clothes and infiltrated the protests. These plainclothes Police officers were identified by various sources as members of the “Grupo Terna”, a unit usually used to combat organized crime and not trained to control demonstrations. At a meeting with OHCHR on 20 November, the PNP high command acknowledged having used the plainclothes officers belonging to “Grupo Terna”. According to accounts gathered by OHCHR, the plainclothes officers also carried out their duties inside the Police stations, where in several cases they did not identify themselves. Such use of plainclothes officers contravenes international standards, according to which any deployment of plainclothes officers must be strictly necessary in the circumstances and the plainclothes officers must identify themselves to the persons concerned before conducting a search, making an arrest or resorting to any use of force<sup>23</sup>.
36. Among the persons interviewed by OHCHR, five reported having been arrested by Police in civilian clothes, in a majority of which they were unidentified. This included a man and a woman who were arrested on 14 November for allegedly committing a crime against the public order, as a result of having offered to print protest signs free of charge. According to them, a plainclothes officer requested the printing of a leaflet; he then identified himself as a Police officer and arrested them.
37. All of the individuals who had been detained alleged that they had not received information about their rights, nor an explanation of the reasons for their detention and were pressured to sign self-incriminating statements, reportedly in exchange for a “quicker release”. Two persons were forced to sign blank forms, as reported by their lawyers, and they later discovered that these documents included, among others, a certificate of good treatment and a statement that their rights had been read to them, which OHCHR was able to corroborate during a visit to the Police station. In addition, the detainees reported that they were not offered legal assistance or had prompt access to a hearing before a judge. These violations of due process contribute to the assessment of the detentions as arbitrary.
38. The practices described above also involve failure to comply with all measures necessary to prevent enforced disappearances. According to the available information, all individuals who were not located in the first days after the events were eventually found. However, due to their preventive nature, the obligations regarding enforced disappearance apply regardless of whether or not a disappearance has taken place<sup>24</sup>. Therefore, there are concerns about the detention of individuals where fundamental legal safeguards were omitted, including the lack of access to a lawyer and the lack of notification to relatives or confidants as to the deprivation of liberty, the place of detention and/or the eventual transfer of the detained person to relatives or confidants. Furthermore, the National Registry of Detainees and Individuals Sentenced to Effective Imprisonment and other registries of persons deprived of liberty do not yet include all the required information<sup>25</sup>, despite the commitment made by the Peruvian State to

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<sup>23</sup>CCPR/C/GC/37, para. 92.

<sup>24</sup>One of the persons interviewed by OHCHR stated that they had been detained by Police officers in civilian clothes for more than 48 hours without being brought before the prosecutor or judge, while their relatives did not know their whereabouts as Police officers refused to acknowledge that the person was detained. This case merits rigorous investigation as it could amount to a temporary enforced disappearance.

<sup>25</sup>International Convention for the Protection of All Persons from Enforced Disappearance, Article 17, para. 3.



include this data before the Committee on Enforced Disappearances in May 2019<sup>26</sup>. Likewise, OHCHR received accounts from relatives who indicated that their complaints of disappearances were not received and that the authorities transferred to them the responsibility of carrying out searches in Police stations, hospitals and morgues.

39. All of the detainees interviewed by OHCHR were released between eight and 48 hours after their arrests. They reported depending on their families for access to food during their detention, which was confirmed by the Police authorities interviewed. According to accounts of the individuals interviewed by OHCHR, conditions in detention were degrading, with no access to natural or artificial light, with rats in the cells and strong smells of human excrement. OHCHR was able to corroborate these situations during its visits to Police stations where the individuals indicated having been detained.
40. Two women who were detained in the relation to the protests tested positive for COVID-19 and were kept in solitary confinement for 48 hours without access to running water or sanitary facilities. In another case, four men were placed in the same cell despite the fact that one of them had tested positive for COVID-19. These situations could constitute a form of ill-treatment, while violating the obligation of authorities to protect the health of detainees, their families and Police station staff from COVID-19.
41. Among the people interviewed by OHCHR, 10 reported that they were subjected to psychological abuse and eight to physical abuse. In seven of these cases, the treatment could have amounted to torture, either physical (beatings), psychological (death threats) or sexual. In addition, the victims told OHCHR they had witnessed many other people being subjected to such treatment while in detention.
42. OHCHR received information about eight cases of sexual and gender-based violence against women (five) and men (three) in the context of detentions and during the protests themselves. The cases include threats of sexual violence, groping, degrading treatment, including forced undressing, and homophobic, transphobic and misogynistic comments. Two women reported that, after being humiliated, they were stripped naked, their breasts were touched, and one was forced to perform exercises while naked. There were also accounts of verbal attacks by Police officers questioning the sexual orientation, identity and gender of three people (two transgender women protesters and a journalist covering a protest). Two men reported being stripped naked for no apparent reason during an injury examination by forensic doctors from the Institute of Forensic Medicine, in front of Police personnel. In another case, a young man stated that the Police insisted on an anal inspection during the Institute of Forensic Medicine's injury review, although the fact that there was no allegation of sexual violence; however, the doctor refused to perform such an examination.
43. The Ministry of Women and Vulnerable Populations (MIMP) highlighted that, through the Aurora Programme, legal support is being provided in a case of forced undressing and groping by the Police.

#### **D. Violations of the freedom of expression, in particular the freedom of the media**

44. Between 9 and 16 November 2020, the Peruvian National Journalists Association documented 40 attacks against journalists and media personnel: 18 physical attacks, 10 pellet impact and six tear gas canister impacts. Most of these attacks reportedly took place on 10 and 12 November; 30 of them were allegedly committed by Police officers.
45. In interviews, OHCHR received information about attacks by the Police against duly accredited journalists covering the protests. The information includes the cases of three journalists injured by pellets or tear gas canister, among them, the case of a photojournalist who was shot with pellets in the abdomen by a Police officer who aimed directly at him from two-three meters away on 14 November.
46. These threats, attacks and reprisals against journalists during demonstrations clearly contradict Peru's obligations to respect the right to freedom of expression, in particular the freedom of the media.

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<sup>26</sup>CED/C/PER/CO/1, para. 24.

47. During the crisis, the attempts to restrict freedom of expression were reportedly made by political authorities. The head of press at the Peruvian Institute of Radio and Television (IRTP), Renzo Mazzei, resigned on 13 November, citing attempts at censorship, via a telephone call from a member of staff of President Merino who asked him not to cover the protests.

#### **E. Violations of the rights of human rights defenders**

48. Officials of the Ombudsman's Office and of the Mechanism for the Prevention of Torture, as well as human rights defenders, were present at the protests, carrying out monitoring, sometimes maintaining contact with Police officials and even being allowed to enter certain Police stations. Some of them, however, reported obstacles, threats and insults by the Police, including physical and verbal harassment of staff of the Ombudsman's Office, including against the Deputy for Human Rights and Persons with Disabilities, Percy Castillo. The staff of the Ombudsman's Office described this behavior as unusual and unprecedented in their relationship with the Police.
49. On 10 November, duly identified human rights defenders belonging to the *Coordinadora Nacional de Derechos Humanos* were inside the Alfonso Ugarte Police station, monitoring the situation of detained persons. A group of Police officers —some in civilian clothes, including the officer in charge of this group— opposed the presence of the defenders, pushing them to leave. The Police detained Carlos Rodríguez, a human rights defender, for the alleged crime of resistance to authority; he was insulted and detained for about 15 hours<sup>27</sup>.
50. Attacks and threats against human rights defenders contravene international standards, and the role of human rights defenders, journalists and others involved in observing, monitoring or reporting on human rights, including in the context of gatherings, is of particular importance to the full enjoyment of the right of peaceful assembly. Monitoring of protests by national human rights institutions and non-governmental organizations has been identified as a good practice. Their presence cannot be prohibited, criminalized and they cannot be unduly restricted from exercising these functions, particularly the monitoring of the actions of law enforcement officials<sup>28</sup>.

#### **F. Right to health**

51. With regard to access to emergency health care and evacuation in the places where the protests took place, OHCHR received information that there were fences that obstructed the entrance to certain streets, not allowing ambulances or the vehicles of volunteer health brigades to enter. The health volunteer brigades had to move injured people who required urgent attention and hospital care on foot and on improvised stretchers. Several victims and witnesses also referred to the lack of assistance to the injured people by the PNP.
52. According to information gathered by OHCHR, the health volunteer brigades themselves became targets of attacks by the PNP. On 12 November, five health volunteers were wounded by shotgun pellets despite identifying themselves and raising their hands. On 14 November, another volunteer health worker was shot by a Police officer as he was returning home, despite being miles away from the protests. Also, on 14 November, the Police directed tear gas at a health volunteers medical care point, making it difficult for them to provide first aid.

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<sup>27</sup>As of mid-December 2020, a criminal investigation was still underway against him.

<sup>28</sup>CCPR/C/GC/37, para. 30; A/HRC/31/66, paras. 68, 71.

53. Some injured people who sought access to medical care in hospitals, in particular on 12 and 14 November, reported difficulties in being admitted. In two of the documented cases, the hospital did not agree to treat them because the victims did not have health insurance. In two other cases, in public hospitals, relatives had to resort to seeking funds to cover expenses.
54. The vast majority of cases of hospitalized injured people during protests reported having received good care and attention from medical professionals. Some victims and family members, however, indicated that, in general, they did not have clear information about their state of health; that, in some cases, the medical staff wanted to discharge them while the patients considered their condition was still delicate; and in one case (in a public hospital) relatives were not allowed to visit for five days. Notwithstanding, in general, the victims valued the fact that the Ministry of Health extended or granted comprehensive health insurance to hospitalized persons injured in the protests, regardless of whether or not they had previously had medical coverage.

#### **G. Right to access to truth, justice, and reparation, including guarantees of non-recurrence**

55. The Public Prosecutor's Office initiated two parallel *ex officio* preliminary prosecutorial investigations related to certain human rights violations that occurred in the context of the protests, for the crimes of murder, abuse of authority, serious injury and others. According to the available information, the investigations are being carried out with the support of the Institute of Forensic Medicine and the Forensic Sciences of the Public Prosecutor's Office, without involvement of the Police. One of the investigations, carried out by the office of the National Prosecutor, focuses on the responsibility of high authorities, while the other investigation, against those responsible, is carried out by the Third Supra-Provincial Prosecutor's Office specialized in Terrorism and Human Rights. Several human rights organizations jointly filed a complaint on the same grounds, which was added to the latter investigation.
56. The Judiciary informed OHCHR that no proceedings related to human rights violations in the context of the demonstrations had been formally opened by the time the mission ended.
57. During its mission, OHCHR identified several areas of concern related to the initial investigations:
  - a) The investigations had not focused on all the human rights violations which reportedly occurred in the context of the protests, including violations of the rights to freedoms of expression and of peaceful assembly, failure to provide assistance by Police officers, attacks on human rights defenders, among others.
  - b) Only a few of the victims or their families have had legal representation and therefore only those had been able to attend the ongoing investigations, which can lead to limitations in access to justice<sup>29</sup>. In addition, a risk of re-victimization was observed when investigations were carried out at two levels of Public Prosecutor's Office.
  - c) The need to establish criteria for analyzing patterns of behavior of State agents, as well as for investigation protocols with human rights and macro-criminal approaches, which could eventually allow clarification of command and civilian authority responsibilities, was noted.
  - d) It was reported that the video cameras of the Metropolitan Municipality of Lima in key zones, such as the crossing of the Piérola and Abancay avenues, were out of use or malfunctioning.
  - e) There were ongoing investigations against people who had been presumably detained in an arbitrary manner, including against human rights defender Carlos Rodríguez.
  - f) Various victims indicated that they had not received support from the Program for Victims and Witnesses of the Public Prosecutor's Office, nor did they receive protection from another entity.

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<sup>29</sup>The Ministry of Justice and Human Rights reported that during the period of the protests, public defenders assisted 23 times (eight in Police stations and 15 in hospitals). In two of these cases, the Public Defense assumed legal sponsorship.

58. OHCHR documented unannounced and repeated visits by the Police to hospitalized victims to register their accounts, take blood and urine samples or gunpowder residue swabs, sometimes without the presence of medical staff and in the absence of either a public prosecutor or the victims' lawyer. Some victims expressed concerns that evidence could have been lost due to improper chain of custody, for example, some of them reported that the Police had taken clothing from hospitalized victims, through which the ammunition had passed, allegedly for investigative purposes, despite assurances from the Public Prosecutor's Office that the Police are not participating in the investigative processes.
59. OHCHR also received information about intimidation against victims, complainants and witnesses of Police action, including the presence of Police patrols outside the domiciles of some victims and a health volunteer.
60. In his inaugural speech, President Sagasti apologized, on behalf of the State, to the victims and their families and to all the young people who marched to defend democracy. He also recognized the legitimate right to protest. The Government signaled its support for the injured and stressed the importance of sanctioning those responsible and ensuring that such events do not happen again. After the end of the mission, OHCHR learned that on 18 December the Peruvian State created the temporary Multisectoral Commission to follow up on the actions in favor of the relatives of those killed and seriously injured in the protests that took place between 10 and 14 November and 1 and 3 December 2020<sup>30</sup>. In addition, the Government informed OHCHR about the development of normative and management tools and the strengthening of Police capacities in the area of human rights and the use of force, measures carried out mainly by the Ministry of the Interior.

#### **IV. Conclusion and recommendations**

61. There are reasonable grounds to believe that human rights violations were committed in the context of protests between 9 and 15 November 2020, in particular, violations of the rights to life, to physical integrity, to liberty and security of the person, to health, to peaceful assembly, to due process, and to freedom of expression.
62. Based on these findings, OHCHR recommends the following to the State authorities:

##### **Right of peaceful assembly**

- (1) Ensure that individuals can safely exercise their rights to freedom of expression and of peaceful assembly, without prior authorization, nor arbitrary interferences or restrictions; ensure the harmonization of domestic law regulating the right of peaceful assembly with applicable international norms and standards
- (2) Actively promote that the rights of peaceful assembly and participation are protected and fulfilled in a democratic society, and counter the notion that protest is a crime to be prosecuted, in line with the Human Rights Committee's General Comment No 37 (2000), on freedom of assembly (Article 21 ICCPR).
- (3) Close criminal investigations and administrative proceedings against people who have been arbitrarily detained for exercising their right of peaceful assembly.

##### **Use of force**

- (4) Harmonize national legislation, regulations and manuals with applicable international norms and standards.

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<sup>30</sup>Supreme Resolution No. 271-2020-JUS.

- (5) Repeal the Police Protection Act and guarantee that national legislation includes the principle of proportional use of force and repeal the liability waiver for law enforcement officials who cause injury or death, in line with international standards.
- (6) Ensure unrestricted respect for international norms and standards on the use of force, including the use of nonviolent methods before recurring to less-lethal weapons, and the adequate use of such weapons when required (only authorized ammunition, correct distance, direction and the way of shooting).
- (7) Strengthen the capacity of the Police to appropriately respond to situations of tension or violence in conformity with international norms and standards, including the revision of training capacity-building programmes on techniques of de-escalation, mediation and effective communication and the appropriate use of less-lethal weapons.
- (8) Adopt norms and other measures necessary to protect people and groups requiring special protection, in particular children and adolescents, persons with disabilities and older persons, during the management of protests and crowd control.

### Accountability

- (9) Ensure that prompt, independent, impartial, thorough, transparent and effective investigations are carried out into all alleged human rights violations that occurred in the context of the protests, and that all those responsible are prosecuted and sanctioned. In accordance with international standards and recommendations provided to the State of Peru<sup>31</sup>, the alleged perpetrators of serious human rights violations should be suspended from their duties, or at least not perform law enforcement functions, for the duration of the investigation.
- (10) Ensure that victims of human rights violations have access to an easy, prompt and effective recourse in the form of criminal, civil, administrative or disciplinary procedures, as appropriate.
- (11) Ensure that victims have access, free of charge, to legal assistance relating to accusations of such acts and proceedings.
- (12) Carry out normative and structural modifications within the Ministry of the Interior to ensure the autonomy of disciplinary investigation bodies, including the Police Inspectorate, and the application of human rights treaties. Consider the creation of a unit specialized in disciplinary infringements that include possible human rights violations, under rules established by law, with the participation of civil society.
- (13) Prevent and provide protection to victims and witnesses from intimidation and reprisals.
- (14) Strengthen the Public Prosecutor's Office and public institutions that assist in investigations of human rights violations to guarantee a prompt and effective investigation; in particular, provide human and logistical resources to the Third Supra-Provincial Prosecutor's Office Specialized in Terrorism and Human Rights or establish its *ad hoc* invocation in cases linked to the context of the November 2020 protests.
- (15) Build the capacity of Police officers, public prosecutors, judges and public defense lawyers in matters of international standards on, *inter alia*, use of force, arbitrary detention, sexual violence, torture and other cruel, inhuman or degrading treatment, protest, amongst others.
- (16) Implement appropriate educational measures as well as necessary reforms to guarantee that supervisors in the Police, Public Prosecutor's Office and the Institute of Forensic Medicine prevent, prohibit, investigate, punish and provide reparation, as appropriate, for all forms of sexual and gender violence.

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<sup>31</sup>Article 12 of the International Convention for the Protection of All Persons from Enforced Disappearance; article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; CAT/C/PER/CO/7, para. 17.c; CED/C/PER/CO/1, para. 19.d.

- (17) Provide the services of the Programme for Victims and Witnesses of the Public Prosecutor's Office to victims and family members who require them, while endowing it with sufficient resources for that purpose.

#### **Detention, prevention of disappearances and due process**

- (18) Provide an accessible and updated register of detained individuals.
- (19) Adapt the administrative registers of individuals deprived of liberty, in order to incorporate the elements listed in Article 17.3 of the International Convention for the Protection of All Persons from Enforced Disappearance, ensuring that these registers are updated and freely accessible to families and lawyers.
- (20) Put an end to the practice of arrests and detention by unidentified plainclothes agents.
- (21) Guarantee the right to free legal aid and the immediate presence of the Public Prosecutor's Office whenever a person is detained, as well as the communication with family members and people close to them.
- (22) Adopt comprehensive policies for the search for missing persons in accordance with the Guiding Principles for the Search for Disappeared Persons, including a gender perspective and ensure coordination with key actors, such as the Ministry of Women and Vulnerable Populations.

#### **Freedom of Expression**

- (23) Ensure that journalists can safely and freely carry out their work, without fear of attacks or reprisals.

#### **Defense of Human Rights**

- (24) Ensure that the Ombudsman's Office is protected from any form of pressure, attacks or reprisals linked to its work, and that all attacks or any form of intimidation against the institution or its staff is investigated. Increase the technical, material and human resources so that the Ombudsman's Office and the National Mechanism for the Prevention of Torture to enable them to effectively their mandates throughout the State's territory.
- (25) Ensure that human rights defenders and individuals or organizations that monitor human rights or providing assistance in the context of protests and other contexts can safely and freely carry out their work, without restrictions or fear of reprisals.

#### **Right to Health**

- (26) Guarantee the right to health of victims of human rights violations, including access to free quality health services, for the time required by each and every such person, without any arbitrary discrimination. Ensure that the information to victims and their family members on their health status, diagnosis and necessary interventions is provided by health care staff in a clear and respectful manner.

#### **Reparations**

- (27) Provide comprehensive and immediate reparation to victims and their families for violations that they suffered, incorporating a differentiated approach and affirmative measures into the reparation schemes, as appropriate.

## **Non-Recurrence**

- (28) Adopt measures and actions necessary to ensure that human rights violations perpetrated in the context of protests will not occur, including by the Police.
- (29) Effectively implement the Multisectoral Commission created by Supreme Resolution No. 271-2020-JUS, providing it with sufficient resources and ensuring the broad and active participation of victims, family members and civil society
- (30) Promote and strengthen spaces and mechanisms of dialogue between multiple interested parties, including civil society to identify structural causes of human rights violations during the protests and recommend actions to address them.



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