

Observations In Police Records And Their Prospection To Tutelas De Derecho In Criminal Proceedings

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KEYWORDS

Right of defense, police reports, police abuse, social insecurity

ABSTRACT

The main objective of the research was to analyze the normative limits to establish party observations in police records as part of the exercise of the right to defense and its prospection to protect rights in criminal proceedings. The results of the investigation showed that Peru continues to suffer the effects of abusive police activity that generates irreparable damage to the human essence of the people intervened in an abusive manner or without respect for their fundamental rights because they develop within them a criterion of abusiveness and disproportionality in the treatment by the intervening police officers. For this reason, the investigation establishes the importance of the right to write the observations of the detainee or his defense in the police records in order to denounce on the spot the abuses or arbitrariness committed during the proceedings, since, in most cases, there is a nonsense in the exercise of the function and it is established that the detainee refused to sign the report. It was concluded that there are problems related to arbitrariness in the exercise of police functions that are not reported in a timely manner by the victims, generating mistrust against the authorities and public institutions.

1. Introduction

We currently observe that unfair, discriminatory, and human rights treatment is carried out within detention centres by police personnel (Iskandar, 2022). Likewise, Villafuerte, et al. (2023) reported that within detention centers and prisons, those intervened are exposed to problems of overcrowding, unsanitary spaces, and inhumane treatment; The indiscriminate union of populations without considering their age or recidivism conditions the detainee to belong to criminal groups that will negatively influence their lives, therefore, detainees face a series of emotions and challenges that affect their living conditions during the time they are detained and held in prisons.

Despite the fact that the human family has worked on instruments at the global level to promote the defense of human rights, States at the global level have been to the universal mandate, fully affecting laws, Constitutions and international treaties such as the Universal Declaration of Human Rights (1948), the Convention against Torture and Other Cruel Treatment or Punishment, Inhuman or Degrading Treatment or Punishment (1984), the Optional Protocol to the Convention against Torture (2002), and the Reports on Punishment and Other Cruel, Inhuman or Undignified Treatment or Punishment issued by the United Nations Special Rapporteur on Torture.

It is significant to show that many human rights organizations also publish detailed reports on specific cases of inhumane treatment of detainees in different countries. Amnesty International, Human Rights Watch, and the International Red Cross are among the organizations that monitor and report on human rights violations.

Police records play a critical role in Peru's legal system, serving as detailed records of relevant events, investigations, and statements in the police field. Barreto (2022) argues that these minutes are written by police officers and are considered a public document that objectively records and processes the information collected during a police investigation or intervention. Its importance lies in providing the necessary documentary support to establish facts and circumstances that may be relevant in judicial proceedings.

On the other hand, Marrufo (2023) indicated that it is necessary to highlight that the process of drafting and presenting police reports is not exempt from the possibility of errors or subjective interpretations. In this context, Peña (2023) refers to the importance of the right of the defense to present observations

becomes very relevant in the police records after the police officer finishes reporting in the document, since the possibility of reviewing and questioning the police records allows defense attorneys to identify possible inaccuracies, omissions, or even situations that may affect the validity of the evidence presented.

This right to present observations by the defense stands as an essential safeguard to ensure an honest and honest legal process. It provides the relevance of correcting possible misunderstandings, factual errors or even inappropriate practices on the part of law enforcement authorities. Thus, detailed review and submission of observations constitute a vital mechanism to ensure the transparency and integrity of the legal process in the Peruvian judicial system.

The problem of maintaining the current state of not making observations on the police records is based on the monotony of the process without the declaration of procedural incidents in the act, a situation that is related to the obstruction by police officers of receiving complaints against the officers who work in the institution and the inadequate system of the party table existing in the local police stations. for this reason, the representative of the Public Prosecutor's Office qualifies the minutes presented as valid because these instruments are documents that collect fundamental information on the facts investigated and the first steps taken. For this reason, Herrera (2021) argued that, if these minutes contain inaccuracies, omissions, or errors and are not taken into account or corrected in a timely manner, they can lead to prosecutors dismissing complaints or not filing charges in cases that did merit it.

Likewise, in the preparatory stage of the Peruvian common criminal process, the failure to consider the observations on the police records presented by the defense may affect the soundness of the prosecutorial investigation and the subsequent accusation. Letting contradictions, gaps, or problems pass at this early stage prevents them from being corrected in time and causes the prosecution to arrive weaker at the oral trial (Fuentes, 2020). Therefore, addressing the defense's observations on police records in the preparatory investigation is essential to guarantee the solidity of the prosecutor's accusation and reduce the chances of acquittal or dismissal in later stages (Paredes, 2022).

The main difficulty of seeking information is explained with the help of the following question: What are the normative limits for establishing party observations in police records as part of the exercise of the right to defense and its prospection for the protection of rights in criminal proceedings? Because this activity is restricted by police officers at the time they exhort detainees to sign the minutes, a negative consequence being the ex officio attitude of establishing "refused to sign".

The investigation is important because it will provide up-to-date evidence on a human rights and criminal justice problem with serious consequences. The results can be inputs into public policies to improve the treatment of detainees and legal procedures.

The relevance of the research is based on the need to provide informative-documented evidence of the human rights scenario in the Peruvian penal system. Its results will inform proposals for the State to better carry out its commitments at the global level on the dignified treatment of detainees.

The research will contribute to the contribution of empirical data and updated analyses on these problems, complementing previous qualitative studies on factors associated with these problems.

The objective of the search is: To analyze the normative limits to establish observations of parties in police records as part of the exercise of the right to defense and its prospection to protection of rights in criminal proceedings.

2. Methodology

Type of research

According to Ñaupas, Valdivia, Palacios, and Romero (2018), basic research is characterized by its theoretical usefulness in the dissemination of knowledge, while descriptive research delineates the

phenomenon studied by detailing its characteristics. Both approaches complement each other to analyze how Peruvian courts are evaluating police interventions, the drafting of the minutes and the rights that are affected during this procedural stage; likewise, the theoretical understanding of the subject will be expanded and jurisprudential trends will be described.

Data collection technique

Documentary review allows us to examine relevant records without intervening in reality (Baena, 2017). Analyzing judicial resolutions, arguments related to the detentions, abuses and excesses of police officers at the time of drafting the minutes will be identified and with this situation affects the guarantee of the constitutionally recognized right to defense; using this information without manipulating the natural context where they were issued, which is appropriate to the qualitative approach proposed.

Data analysis

Thematic analysis makes it easier to find interpretative patterns through coding and categorization (Braun, Clarke, & Hayfield, 2019), allowing us to describe approaches to the object of study.

According to Okuda and Gómez (2005), the triangulation of different judicial decisions will increase the validity of the arguments studied to generate the conclusions of the research.

3. Result and Discussion

1 Result of the documentary analysis

A review of the literature recorded in Scopus during the period 2013-2023 is carried out under the study of the variables POLICE ACTS, GUARDIANSHIPS, LAW, CRIMINAL PROCEEDINGS in order to determine how research has been conducted at a global level regarding the aforementioned variables by means of the following figure that shows the co-occurrence of keywords.

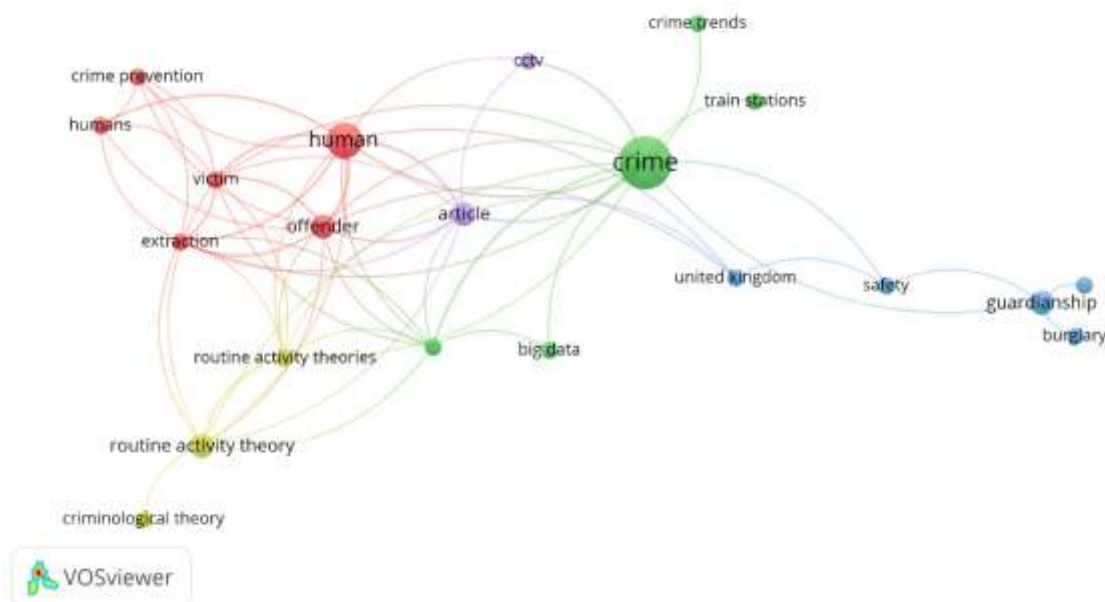


Figure 1. Keyword co-occurrence

Source: Authors' elaboration based on data provided by Scopus

The analysis of the co-occurrence graph carried out through the VosViewer tool reveals a complex structure around criminological studies, focused on crime prevention and the use of emerging technologies to address security issues. A key cluster revolves around the theory of routine activity,

which looks at how people's daily interactions and the presence of gatekeepers can influence the occurrence of crime. The concepts of victim, offender and crime prevention are grouped in this framework, underscoring the importance of understanding human behavior patterns in the prevention of criminal acts. In addition, the cluster highlights the concern about the accuracy of data collection and its impact on protection measures.

On the other hand, the graph highlights the growing relevance of the use of big data and surveillance technologies such as CCTV in the analysis and control of crime, especially in public spaces such as train stations. The co-occurrence of terms such as "security" and "surveillance" highlights how these technological tools are crucial to improving security in places prone to crime, such as robberies. The study also suggests a growing need to strengthen judicial protection and the integrity of the processes around the documentation and analysis of crimes, in order to guarantee transparency and justice in the legal system.

The study of the surveillance of the preparation and review of criminal records has a significant impact on the effectiveness of the penal system in countries such as Peru. Criminal records are a crucial document in court proceedings, as they contain the initial evidence and testimonies about a crime. If these documents are prepared in a non-rigorous manner, with a lack of objectivity or precision, the impartiality of the criminal process is compromised. In this context, monitoring how such minutes are drafted and validated can substantially improve the transparency and integrity of the judicial system, contributing to greater public trust in legal institutions.

Implementing oversight mechanisms, such as external audits or the use of technologies to oversee the writing of minutes, can prevent falsification of evidence or bias in information collection. In addition, it allows any errors or inconsistencies to be corrected in the early stages of the judicial process, resulting in fairer and more informed judicial decisions. In countries such as Peru, where there are challenges related to corruption and inefficiency of the judicial system, more rigorous oversight of these procedures can strengthen the overall effectiveness of the criminal system, ensuring that the rights of the parties involved are respected and that due process is met at every stage.

With the application of the documentary analysis technique, the analysis of the main documents related to the phenomenon investigated during the years 2020 to 2023 was carried out, the documents evidenced the existing problems in relation to the treatment of the fundamental rights of individuals detained in the Peruvian State, being an alarming reality what is described in the following table:

Table 1. Documentary analysis of research articles related to the phenomenon

AUTHOR	METHODOLOGY	RESULTS	CONCLUSIONS
Amnesty International (2022)	Qualitative study, based on interviews with arbitrarily detained persons, their families and defence lawyers.	Arbitrary detentions are a widespread practice in Peru, occurring for racial, social or political reasons. Police abuse is a common practice during arbitrary detentions, and manifests itself in physical, psychological, and verbal violence. The violation of due process and the right to defense is a direct consequence of arbitrary detentions and police abuse.	The Peruvian State must adopt urgent measures to prevent and punish arbitrary detentions and police abuse. Due process and the right to defense must be guaranteed to all detainees, regardless of their social or political status.
National Network of Detained Persons Defense	Qualitative study, based on interviews with arbitrarily detained persons, their families and defence lawyers.	Arbitrary detentions are a widespread practice in Peru, occurring for racial, social, political, or economic reasons. Police abuse is a common	The Peruvian State must adopt urgent measures to prevent and punish arbitrary detentions and police abuse. Due process and the right to

Attorneys (2022)		practice during arbitrary detentions, and manifests itself in physical, psychological, and verbal violence. The violation of due process and the right to defense is a direct consequence of arbitrary detentions and police abuse.	defense must be guaranteed to all detainees, regardless of their social or political status.
Institute for Development and Peace Studies (Indepaz) (2022)	Quantitative study, based on an analysis of statistical data.	Arbitrary detentions have increased in Peru in recent years. Police abuse is a common practice during arbitrary detentions, and manifests itself in physical, psychological, and verbal violence. The violation of due process and the right to defense is a direct consequence of arbitrary detentions and police abuse.	The Peruvian State must strengthen the internal control system of the Peruvian National Police to prevent arbitrary detentions and police abuse. Due process and the right to defense must be guaranteed to all detainees, regardless of their social or political status.
World Organization Against Torture (OMCT) (2022)	Doctrinal study, based on an analysis of legislation and jurisprudence.	Arbitrary detentions are a violation of the right to personal liberty, recognized by the Peruvian Constitution. Police abuse is a violation of human rights, which are recognized under international law. The violation of due process and the right to defense is a direct consequence of arbitrary detentions and police abuse.	The Peruvian State must modify legislation to prevent arbitrary detentions and police abuse. Due process and the right to defense must be guaranteed to all detainees, regardless of their social or political status.
Human Rights Center of the Catholic University of Peru (2021)	Quantitative study, based on an analysis of statistical data.	Arbitrary detentions have increased in Peru in recent years. Police abuse is a common practice during arbitrary detentions, and manifests itself in physical, psychological, and verbal violence. The violation of due process and the right to defense is a direct consequence of arbitrary detentions and police abuse.	The Peruvian State must strengthen the internal control system of the Peruvian National Police to prevent arbitrary detentions and police abuse. Due process and the right to defense must be guaranteed to all detainees, regardless of their social or political status.
Institute of Legal Defense (2020)	Doctrinal study, based on an analysis of legislation and jurisprudence.	Arbitrary detentions are a violation of the right to personal liberty, recognized by the Peruvian Constitution. Police abuse is a violation of human rights, which are recognized under international law. The violation of due process and the right to defense is a direct	The Peruvian State must modify legislation to prevent arbitrary detentions and police abuse. Due process and the right to defense must be guaranteed to all detainees, regardless of their social or political status.

		consequence of arbitrary detentions and police abuse.	
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3.2 Introduction

3.2.1 Presentation of the current context of inhumane treatment in detention centres

Inhumane treatment in detention centers in Peru is a reality that affects thousands of citizens deprived of their liberty, especially those who are prosecuted or convicted of terrorist crimes, these people suffer violations of their human rights, such as torture, sexual violence, crowded conditions, deficiency of medical care, among others. These violations are contrary to the principles of the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, to which Peru is a party.

The Inter-American Court of Human Rights has condemned the Peruvian State in several cases for violating the rights of persons deprived of their liberty, such as the case of Mrs. J., who was detained, searched, ill-treated, tortured, and raped by State agents in 1992, in the context of an investigation and criminal proceedings for alleged crimes of terrorism; that is why the Inter-American Court ordered Peru to investigate, prosecute, and convict the culprits, as well as to fully compensate the victim (Inter-American Commission on Human Rights, 2011).

However, despite the Court's rulings and the recommendations of the Ombudsman's Office (2021), the State has failed to comply with its obligation to prevent and eliminate inhuman abuses in police detention centers. According to the Ombudsman's Office (2021), Peru has a National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has the mission of carrying out periodic visits to areas where lives are deprived of their liberty, and issuing reports and recommendations to improve their conditions. However, this mechanism does not have sufficient resources to carry out its work, and its recommendations are not complied with by the competent authorities.

In addition, the State has not taken legislative, administrative and judicial action to certify respect for the rights of prisoners, especially those who are prosecuted or convicted of terrorist offences. These people are subjected to a special regime of isolation, restriction of visits, limitation of educational and work activities, and use of weapons of war, explosives, and tear gas bombs by state agents (Pérez, 2010). These measures are contrary to the principles of proportionality, necessity and humanity that must govern a procedure for persons deprived of liberty.

3.2.2 Description of the relevance of international human rights instruments

Universal human rights tools are of great relevance in cases of police custody, as they establish the principles and norms that must be respected by States and their agents, including law enforcement operators, to guarantee the right to liberty and security of individuals, as well as the right to due process and to dignified and humane treatment. These instruments are binding on the States that have ratified them, and also reflect customary international law and general principles of law.

Among the international human rights instruments that regulate cases of police custody, the following may be mentioned:

- The Universal Declaration of Human Rights (1948), which in its article 3 recognizes the right to life, liberty and security of everyone, and in its article 9 prohibits arbitrary detentions.
- The International Covenant on Civil and Political Rights (1966), article 9 of which lays down the minimum guarantees to be observed in all detentions, such as the right to be informed of the reasons for detention, the right to be brought promptly before a judge, the right to challenge the lawfulness of detention, the right to the presumption of innocence, the right to legal

assistance, the right to be tried within a reasonable time or to be released, and the right to compensation in the event of unlawful or arbitrary detention.

- The Convention against Torture and Other Cruel Treatment or Punishment (1984), Inhuman or Degrading Treatment or Punishment, article 2 of which obliges States to take legal, administrative, judicial and other procedures to detect torture and other cruel, bloodthirsty or undignified treatment or punishment in any event, and article 16 extends this obligation to acts that do not amount to torture but involve inhuman treatment, brutal or indecent.
- The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), which forms the general and specific principles that should guide the treatment of persons deprived of liberty, such as the principle of legality, the principle of proportionality, the principle of humanity, the principle of non-discrimination, the principle of respect for dignity, the principle of medical assistance, the principle of contact with the outside world, the principle of judicial review, among others.
- The Code of Conduct for Law Enforcement Officers (1979), which sets out the ethical and professional standards to be observed by law enforcement officials, such as respect for human rights, the use of force only when strictly obligatory and to the extent requested, the duty to protect the health of individuals under its conservation, the duty to denounce acts of transgression of human rights, among others.
- The Basic Principles on the Management of Force and Firearms by Law Enforcement Delegated Personnel (1990), which institute guidelines to be followed by law enforcement employees for the use of force and firearms, such as the principle of legality, the principle of necessity, the principle of proportionality, the principle of precaution, the principle of accountability, among others.

These international human rights instruments have been applied and interpreted by monitoring and control bodies, such as the Human Rights Committee, the Committee against Torture, the Working Group on Arbitrary Detention, the Inter-American Court of Human Rights, among others, which have issued opinions, observations, recommendations, judgments and jurisprudence on cases of police custody. both at the global and provincial levels.

In the case of Peru, international human rights materials are part of the national normative framework, as provided for in Article 55 of the Magna Carta, which recognizes treaties ratified by the Peruvian State as the supreme law of the Nation, and Article 3 of the Code of Constitutional Procedure, which establishes that constitutional rights must be interpreted in accordance with the international human rights treaties ratified by Peru. Likewise, Article 200 of the Peruvian Constitution empowers citizens to insert constitutional guarantee tasks, such as habeas corpus and amparo, to protect their fundamental rights against acts or omissions of the authorities, officials or individuals that transgress or intimidate them.

In this connection, the Constitutional Court of Peru has issued various verdicts and jurisprudence on cases of police custody, applying and invoking international human rights materials, as well as the pronouncements of international bodies. Among these judgments, the following can be mentioned:

- ✓ Judgment 738/2021, which declared founded in part an amparo lawsuit filed by a citizen who requested the acquisition and delivery of two hearing aids for his father, who was detained for terrorism crimes, and who had been denied said request by the summoned entity, invoking a regulatory rule that excluded the coverage of said biomedical material. The Constitutional Court declared the non-application of this rule as contrary to the right to health and the principle of equality, and ordered the entity summoned to issue a report on the patient's economic

situation and other criteria to determine whether or not it was entitled to the acquisition and delivery of the requested hearing aids.

- ✓ Judgment 0006-2006-PI/TC, which declared founded a claim of unconstitutionality filed by the Ombudsman against Article 12 of Legislative Decree 895, which established that the police detention of citizens investigated for terrorist crimes could last up to fifteen days, without the need for a court order or subsequent control. The Constitutional Court declared the unconstitutionality of said article because it violated the right to personal liberty and the principle of proportion, and pointed out that police detention could only last the strictly mandatory period for the preparation of the essential steps for the investigation of the fact, without in any case exceeding twenty-four hours. except in the case of offences punishable by imprisonment of more than six years, in which case the maximum period was forty-eight hours.
- ✓ Judgment 4587-2004-HC/TC, which declared founded a habeas corpus petition filed by a citizen who was detained by police personnel without a warrant or flagrante delicto, and who was subjected to torture and ill-treatment during his detention. The Constitutional Court ordered the immediate release of the applicant, as well as the investigation and punishment of those responsible for the illegal and arbitrary detention, torture and ill-treatment inflicted on the applicant. The Constitutional Court also invoked global human rights instruments, such as the Convention against Torture and the Code of Conduct for Law Enforcement Officials, noting that torture and ill-treatment were inconsistent with the rule of law and human dignity.

In this way, it can be seen that global human rights materials are of great relevance in cases of police custody, since they establish the minimum models that States and their agents must respect, and that are applied and interpreted by the monitoring and control bodies, both at the universal and regional levels. as well as by national courts, which have the power to inspect the constitutionality and legality of detentions, and to preserve the fundamental rights of citizens deprived of liberty.

3.2.3 Importance of police records as fundamental records in the Peruvian legal system

Police records are fundamental records in the Peruvian legal system, since they constitute public documents that attest to the actions or facts related to the police function, and that serve as means of evidence in criminal proceedings. Police reports can be of various types, depending on the diligence carried out, such as intervention, detention, search, search, seizure, recognition, among others. These records must comply with certain requirements and accuracies to ensure their effectiveness and usefulness, such as specifying the place, date and time of the proceeding, identifying the participants, detailing the circumstances of the event, describing the objects if any, signing and printing the right index, communicating to the Public Prosecutor's Office, among others.

The legal materials that regularize police records in Peru are, among others, the Code of Criminal Procedure, the Police Documentation Manual, the Directive on the Police Function in Preliminary Investigation, the Regulations of the Law on Flagrante Delicto, and the Protocol for Police Action in Cases of Violence against Women and Members of the Family Group. These instruments establish the rules, principles, procedures and criteria that police officers must observe when drawing up police reports, as well as the obligations and sanctions in the event of misconduct or disproportion.

National jurisprudence has also developed criteria and standards on police records, both in the constitutional and criminal spheres. For example, the Constitutional Court (2020) in judgment 372/2021, has indicated that police reports must respect the right to due motivation for resolutions, the principle of criminal legality, the principle of necessary imputation and the presumption of innocence, and that their assessment must be carried out jointly and reasoned with the other elements of conviction. Likewise, the Supreme Court (2019) in RN 51-2019, East Lima and RN 933-2019, East Lima, has established that police reports must comply with the requirements of immediacy, proportionality and

necessity, and that they must be corroborated with other means of evidence, especially when it comes to crimes committed in flagrante delicto.

3.3 Inhumane Treatment in Detention Centers: Context and Challenges

3.3.1 Analysis of unfair, discriminatory treatment and inhumane conditions in detention

In the case of Peru, the universal entities consigned to the protection of human rights have issued multiple reports related to the cruel, brutal and undignified treatment of citizens who are in prison. According to the Inter-American Commission on Human Rights (2013), overcrowding, lack of adequate food, unsanitary conditions, violence, and physical punishment are common practices in Peruvian detention units and prisons.

According to the International Committee of the Red Cross (2019), prison conditions in Peru violate basic international standards on human dignity and the rights of detained citizens. For example, in several prisons there is less than 1 square meter per person, which increases diseases and violence. Likewise, Amnesty International (2018) has condemned discrimination and cruel treatment of trans women in prison, according to this organization, trans women are subjected to invasive vaginal examinations, prolonged isolation and lack of appropriate hospital care. These practices constitute inhuman, brutal and undignified treatment, which are prohibited by the American Convention on Human Rights (1969) and the International Covenant on Civil and Political Rights (1976), both ratified by Peru; likewise, the jurisprudence of the Inter-American Court of Human Rights established in the case of *Institute for the Reeducation of Minors v. Paraguay* (2004) that subjecting a citizen to inhuman and degrading situations of detention is in itself a form of inhuman, cruel and undignified treatment.

Article 159 of the 2004 Code of Criminal Procedure states that every citizen has the right not to have his or her physical, mental and moral integrity violated when he or she is detained. It also prohibits incommunicado detention, intimidation and torture during police or Public Prosecutor's Office interrogations; however, in the reports of the National Human Rights Coordinator (2019), cases of torture of detainees by police and military agents persist in the nation and between 2016 and 2019 316 cases of martyrdom and inhumane treatment were registered in police stations and military barracks, mainly to obtain information or confessions.

According to Rivera (2017), the UN Human Rights Committee has called on the Peruvian State to investigate, prosecute, and condemn cases of martyrdom against detainees, emphasizing the case of *Espinoza Gonzáles v. Peru* (2014), where the State was condemned for the unjust detention, martyrdom, and retained disappearance of Professor Espinoza Gonzáles in 1993.

Therefore, despite the legal prohibitions on torture and cruel treatment in detention, these practices persist in Peru, as evidenced by reports from national and international organizations. The State has yet to eradicate impunity in these cases and to attest to respect for the honesty and dignity of all detainees.

3.3.2 Impact of overcrowding and indiscriminate bonding on the life of the detainee

According to the jurist Castillo (2021), prison overcrowding generates unhealthy conditions, the lack of beds, mattresses and spaces to sleep, eat or wash, generates an increase in respiratory, gastrointestinal and dermatological diseases among inmates; likewise, the Inter-American Court of Human Rights in the judgment *Pacheco Teruel v. Honduras* (2012) condemned prison overcrowding as constituting in itself inhuman, cruel and undignified treatment of detainees.

According to the Ombudsman's Office (2018) where it was reported that the indiscriminate union of inmates increases cases of violence, abuse and contagion of diseases between dangerous criminals and those arrested for minor crimes, this situation also exposes inmates to illicit activities within prisons such as drug trafficking.

Additionally, Castillo (2021) indicated that overcrowding and the lack of classification of inmates have harmful effects on the physical and mental health of those incarcerated in a prison, as established by the Constitutional Court of Colombia in sentence T-762/15, this being a social phenomenon that increases the risks of violence and criminal activities within the walls. seriously affecting their human rights, as Peruvian jurist Humberto Castillo points out.

Finally, the Ombudsman's Office (2017) indicated that prison overcrowding in Peru constitutes inhuman, cruel, and undignified treatment, as held by the Constitutional Court in judgment No. 01126-2007-PHC/TC, in view of the fact that it prevents the proper classification and treatment of inmates, increasing risks and affecting their rights.

3.3.3 Emotional repercussions and challenges faced by detainees

In relation to the emotional repercussions, Cleveland et al. (2018) argue that detention can have serious psychological repercussions on detainees, including symptoms of post-traumatic stress, anxiety, and depression" (Cohen, 2008). This is because detention often entails isolation, uncertainty about the future, and a lack of autonomy and privacy.

On the other hand, Mitchell and MacKenzie (2018) report that detainees face a variety of obstacles, including limited access to medical and legal care, unhygienic conditions, overcrowding, lack of meaningful activities, and abuses by staff; additionally, Robjant et al. (2019) indicate that these challenges can have long-lasting harmful effects on the physical and mental state of detainees.

Therefore, it is argued that detention has negative consequences on the person because they are subjected to stressful and precarious conditions that represent significant challenges to their health and well-being.

It is essential to observe the jurisprudential criteria adopted on this phenomenon, in the case of the Institute for the Reeducation of Minors against Paraguay, the Inter-American Court of Human Rights (2014) established in its judgment that some disciplinary measures applied in the Institute for the Reeducation of Minors in Paraguay, such as isolation in small cells without ventilation or natural light, constituted inhuman, cruel and undignified treatment that affected the psychological and moral integrity of minors.

The European Court of Human Rights (2006) in Ramirez Sanchez v. France ruled that the conditions of solitary confinement and extreme supervision to which the applicant was subjected during his detention caused serious mental repercussions, amounting to inhuman and degrading treatment.

The judgments of the countries of Colombia and Argentina also ruled on this type of practice in their jurisdiction, the Constitutional Court of Colombia (1998) in judgment T-153/98 declared that prison overcrowding and deplorable hygienic-sanitary conditions in Colombian prisons violated the human dignity of prisoners and ordered the authorities to take measures to progressively improve these conditions; while the Supreme Court of Justice of the Argentine Nation (2005) in the Verbitsky case, declared the existence of serious violations of the human rights of detainees in Buenos Aires prisons due to overcrowding, lack of adequate food, medical aid and poor building conditions, affecting their physical and mental integrity.

3.4 International Human Rights Instruments and their Implementation in Peru

3.4.1 Overview of the Universal Declaration of Human Rights and the Convention against Torture

Both the Universal Declaration and the Convention against Torture are fundamental international instruments that set standards for the protection of fundamental rights; According to Carozza (2013), the Universal Declaration laid the foundations for the improvement of contemporary international human rights law by establishing a catalogue of fundamental rights and freedoms that all States must respect and certify. On the other hand, Burgers and Danelius (1988) report that the Convention against

Torture strengthened the absolute prohibition of these acts, establishing international preventive mechanisms, binding definitions, and the obligation of States to prosecute acts of torture.

For this reason, the international system for the protection of human rights established the fundamental foundations for strengthening the role of the State in its duty to recognize, respect and guarantee the rights established in the treaty so that citizens can live freely without being victims of arbitrariness or other cruel treatment that undermines their personality. Likewise, taking into account the position of Ni Aolain (2016), it is considered that both instruments are complementary and essential to limit the abuse of State power and safeguard the dignity and integrity of all citizens; therefore, both instruments provide a comprehensive framework for universal respect for human rights.

3.4.2 Evaluation of the accession to and application of international treaties in Peruvian legislation

The Ombudsman's Office (2007) indicated that the Peruvian State has corroborated most of the main international human rights treaties, however, in practice there are still challenges in the effective implementation of these international standards; for this reason, "there are still problems of dispersion and lack of regulatory coordination for the application of the treaties" (p. 156); In addition, despite the fact that local legal operators are aware of international instruments, the fact is that in practice they continue to commit conduct contrary to them, consequently the Ombudsman's Office recommended in Ombudsman's Report No. 98 the following measures to improve the application of international human rights treaties in Peruvian legislation:

- To carry out training activities for justice operators (judges, prosecutors, police officers) on the content of the human rights treaties ratified by Peru and the obligatory nature of their application in domestic law.
- Incorporate the study of international treaties in a transversal way in the curricular mesh of the country's law schools.
- Periodically disseminate the content of these treaties among the public in order to promote their knowledge and enforceability.
- To carry out the compatibility check between human rights treaties and bills before their promulgation by the Congress of the Republic.
- Create an Inter-Institutional Commission and a single registry of international human rights treaties ratified by Peru.
- Establish mechanisms for the effective monitoring of compliance with and implementation of the original obligations of said ratified international treaties.

It is essential to recognize that there is still a lack of knowledge on the part of police officers about the recognition and duty of guarantor that they have over the rights of detainees, for this reason, it is necessary to constantly train them to guarantee the purposes of the right.

3.4.3 Reports on torture and inhuman treatment issued by the UN Special Rapporteur

The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment makes regular country visits to monitor the situation of these practices. In the latest thematic report on torture presented by Special Rapporteur Nils Melzer in 2020, he states that "torture and ill-treatment continue to be used around the world" (Melzer, 2020, p. 3), identifying risk factors such as discrimination, impunity, police and judicial corruption, as well as regressive policies in the fight against terrorism.

With respect to Latin American countries, in 2017 the Special Rapporteur expressed concern about reports of torture of detainees during social demonstrations in Honduras and the high incidence of sexual violence against women deprived of liberty in Peru (United Nations, 2017). Reports from

previous years also highlight reports of cases of martyrdom and inhumane treatment in Venezuela and Mexico.

While normative commitments against torture have been adopted in the region, in practice these abuses often persist due to deficiencies in the investigation of complaints, judicial prosecution and impunity for perpetrators.

3.5 Role of Rights Organizations

3.5.1 Contributions from Amnesty International, Human Rights Watch and the International Red Cross

International organizations for the protection of human rights have made important contributions in the fight against torture and protection of citizens imprisoned in prison.

Amnesty's 2014 global report (2014) documented cases of martyrdom and grievances in 141 countries during 2013, the reports recorded establish data on rapes with objects up to electric shocks, sleep deprivation, asphyxiation, among other methods of torture; The report identifies the causes such as the lack of preventive mechanisms, deficient investigations of complaints and permissive institutional cultures with torture.

For its part, Human Rights Watch (2020) has investigated the use of sexual torture as a weapon of war against women and girls in countries such as Syria and Myanmar over the last decade, its reports demonstrate patterns of sexual violence as a tool to humiliate, punish and instill terror; They have also widely denounced the systematic torture of opponents in authoritarian regimes.

Regarding the International Committee of the Red Cross (2017), its humanitarian work includes monitoring through thousands of annual visits to prisons around the world to verify conditions and prevent torture; They also provide direct medical and psychological assistance to victims when they have access, as well as training prison staff on standards of treatment and detention.

3.5.2 Monitoring and reporting of human rights violations in detailed reports

The international NGO Human Rights Watch (2022) issued its 2022 World Report where it denounced patterns of police abuse against protesters in Colombia, repression of activists in Egypt and insufficient protection of the rights of Afghan women, the main complaints are the following:

- Abuses against protesters and excessive use of force in state responses to protests: serious cases are documented in countries such as Colombia, Belarus, Sudan and Hong Kong.
- Global increase in discriminatory legislation against women and LGBTI people: laws contrary to women's sexual and reproductive rights are identified in Poland and Afghanistan; and proliferation of "anti-LGBTI" norms in Hungary, Russia, among others.
- Gender-based violence and child marriage on the rise due to the pandemic: setbacks are reported such as fewer reports of cases and weak implementation of prevention programs due to COVID-19 restrictions.
- Climate emergencies with insufficient focus on human rights: In the face of events such as fires and floods, States did not take adequate measures to protect the lives and homes of the most vulnerable.
- Insufficient equitable access to COVID-19 vaccines: Global commitments to universal access were not met and rich countries hoarded doses, leaving low-income countries behind.

Likewise, Amnesty International (2022) issued an extensive Annual Report in which it documents and analyzes the human rights scenario in the different continents, in its 2022 edition it reports from extrajudicial executions in Venezuela and torture in prisons in El Salvador, to restrictions on

freedoms due to emergency measures during the pandemic in places such as Hungary; The main complaints are as follows:

- Excessive use of force in the state's response to protests: Cases were reported in places such as Colombia, where police were allegedly responsible for the killing of protesters.
- Setbacks in women's sexual and reproductive rights: restrictive measures on abortion in countries such as Poland, El Salvador and the United States.
- Increase in gender-based violence facilitated by the pandemic: lockdowns exacerbated risk factors by locking women up with their aggressors.
- Persecution of human rights defenders and activists: from criminalization in Nicaragua to illegal digital surveillance in Spain against Catalan journalists and politicians.
- Arbitrary arrests and unfair trials: In Belarus, China, Saudi Arabia and Cameroon, dissidents and political opponents are said to have been criminally prosecuted without legal guarantees.
- Impunity for alleged war crimes: Allegations of crimes against humanity by Taliban forces were not adequately investigated in Afghanistan.

In Freedom House (2022), it publishes annual studies on political rights and civil liberties by country, in the Freedom in the World Report 2022 it reveals that less than 20% of the population internationally lives in truly free countries, with evidence of setbacks in human rights in nations such as Nicaragua and India; The main complaints made are the following:

- It was the fifteenth consecutive year of global decline in democratic freedoms. Only 44% of the world's population lives in countries considered free.
- China and Russia have exported authoritarian models, censorship, and digital surveillance to other regimes to expand their influence and geopolitical interests.
- Violence and harassment against journalists and independent media continued to increase in places such as India, Belarus and Hong Kong.
- The pandemic exacerbated previous authoritarian tendencies, with 71 countries implementing states of emergency with disproportionate violations of rights.
- Serious irregularities and unprecedented electoral fraud were reported in places like Nicaragua, where Ortega arrested pre-candidates and secured a new re-election.
- Ethnic and religious groups faced increasing persecution in countries such as China, India and Myanmar.

3.5.3 Impact of these organizations on global awareness and accountability

International organizations have made a powerful contribution to making visible at the global level the problems that used to remain hidden or silenced, such as torture, unfair trials and enforced disappearances. Their data and direct testimonies have shown the seriousness and magnitude of these abuses.

Likewise, its exhaustive reports with credibility, evidence and contrasted data have permeated the global public debate, raising awareness among millions of citizens about realities that violate fundamental rights.

On the other hand, it is noted that they have exerted effective pressure on governments and intergovernmental organizations through lobbying, campaigns, formal complaints and demands for investigation, prosecution and sanctions of perpetrators of human rights violations.

Finally, they have empowered victims and local human rights groups by giving them visibility and tools for political advocacy and the demand for justice in the face of the injustices they suffer.

3.6. Importance of Police Acts in the Peruvian Legal System

3.6.1. Function of police records as detailed and objective records of events and investigations

Police records play a fundamental role as detailed and objective records of events and investigations in the police and judicial environment, in the local legal system the function of police records is regulated by the Code of Criminal Procedure, which provides that police reports must be drafted in a clear, precise and objective manner. in order to faithfully document the facts and circumstances related to an event or an investigation.

Article 159 of the Peruvian Code of Criminal Procedure establishes that police reports are evidence and must be subject to a detailed representation of the facts, the statements of the participants, the evidence collected and any other information relevant to the investigation; This legal provision seeks to guarantee the veracity and objectivity of the information contained in the police records, so that they serve as fundamental elements in the process of investigation and prosecution of the facts.

In this sense, police records play an essential role in the collection and preservation of evidence, as well as in the documentation of police actions during the development of an investigation, as García (2018) points out, police records constitute a legal instrument of vital importance for the explanation of the facts and the guarantee of the rights of the parties involved in a criminal process.

3.6.2. Documentary support necessary to establish facts and circumstances in judicial proceedings

Documentary support is essential in criminal judicial proceedings to prove the elements of fact and circumstances relevant to the legal classification of the case, Article VIII of the Preliminary Title of the Peruvian Code of Criminal Procedure establishes the principle of comprehensive investigation, which includes the performance of documentary evidence.

For the same reason, the development of documentary evidence in criminal matters allows establishing factual aspects linked to the crime, according to Pariona (2019), its purpose is to create conviction in the judge about the facts charged; therefore, the documents submitted must refer directly to the case, complying with the requirements of relevance and evidentiary usefulness established in Article 155 of the Code of Criminal Procedure.

Among the principles applicable to the support of criminal documents are:

- Lawfulness: the documents must not violate fundamental rights.
- Authenticity: the credibility of the document must be verified.
- Integrity: the document must be complete.
- Only by complying with these principles will it have validity and evidentiary efficacy for the facts and circumstances of the criminal proceedings.

Therefore, the correct performance of documentary evidence in criminal matters is essential to enervate the presumption of innocence and establish all the circumstances of the case with criminal legal relevance; Likewise, respect for the requirements and principles applicable to this evidence guarantees its probative value within the process.

3.6.3. Context for drafting and presenting police reports

Police reports are documents prepared by police officers that describe actions carried out during their duties, they have criminal procedural relevance when they relate interventions linked to a crime, in article 68 of the Code of Criminal Procedure, they constitute means of documentary evidence.

The context of drafting police reports for evidentiary purposes in criminal proceedings implies respect for the formalities instituted in Article 81 of the Procedural Code, as Caro (2020) specifies, they must include identification data of the police officer, describe actions carried out, place, time and results of the intervention.

With respect to the presentation of these records, Article 334 of the Code states that police officers may testify about the facts contained in the police reports that they record, orally detailing the circumstances of the intervention; On the other hand, the context of presentation is the police witness statement at the criminal hearing, where the record is incorporated as documentary evidence.

Consequently, police reports constitute procedural pieces of evidentiary relevance in criminal proceedings. Both its drafting and presentation in court must be subject to the procedure established in Peruvian criminal and criminal procedure laws, in order to guarantee the validity of its content.

3.7. Right of Defense and Observations in Police Records

3.7.1. Analysis of the process of drafting and presenting police reports

Article 81 of the Procedural Code establishes that police records document actions carried out by the National Police in the exercise of its functions, acquiring criminal procedural relevance when they describe an intervention linked to a crime.

Likewise, Varsi (2019) indicates that, in the drafting of the police report, information must be recorded on the identity of the police officer, place, date and time of the intervention, as well as a detailed list of the scenarios of how the events occurred, this is in accordance with Article 68 of the code because it establishes that the report must be signed by the interveners or fingerprint in case they could not sign.

With respect to presentation, Article 334 of the aforementioned legal body specifies that police officers may testify about the facts narrated in their minutes during the criminal hearing; in this regard, Caro (2020) points out that, at that procedural moment, the record is incorporated as documentary evidence, with the police statement being a means of reinforcing its content.

Therefore, both in the drafting and in the subsequent presentation of the minutes in court, police officers must observe the requirements and formalities contemplated in Peruvian criminal and procedural laws, in order to guarantee their value and evidentiary effectiveness.

3.7.2 Importance of the right of defence to present observations and questions

The right of defense, enshrined in Article IX of the Preliminary Title of the Code of Criminal Procedure, empowers the accused and his counsel to intervene and act as evidence at all stages of the proceedings; This right is fundamental to present observations and questions within the process.

According to San Martín (2020), the possibility of the technical defense to observe and contradict the elements of conviction presented by the Public Prosecutor's Office reaffirms the contradictory nature that governs the modern criminal process. Likewise, Articles IX and 71 of the Administrative Code establish that no evidence has value if the defense has not been able to exercise its right to intervene in the proceedings and interrogate the evidentiary bodies, this guarantees the right to due process and avoids arbitrary convictions.

Thus, the presentation of observations and questions by the defense is transcendental, since it subjects to scrutiny the elements of charge and defense within the process. As Rosas (2009) states, it allows the judge to analyze the solidity and credibility of evidence for the purposes of issuing a sentence.

Therefore, the possibility for the defense to refute evidence and raise observations within the criminal process constitutes an essential manifestation of the right of defense, which guarantees the adversarial nature of the trial and avoids defenselessness.

3.7.3. Essential safeguard to ensure a fair and equitable legal process

The right of defence, recognised by the Constitution and the laws of criminal procedure, constitutes a fundamental safeguard to guarantee the legitimacy and validity of the criminal proceedings, allowing the parties to actively intervene in the trial in order to clarify the facts. As Bramont-Arias and García (2016) point out, the right to defense safeguards essential values such as the right to due process, the right to evidence and the right to procedural contradiction, likewise, the code enshrines this right in its articles IX and 71.

The praxis of the right of defense in criminal proceedings makes it possible to refute evidence, question witnesses, present arguments, and exercise contradiction in the face of accusations, according to San Martín (2020), who argues that this right guarantees the real possibility of being heard and the issuance of a reasoned decision by the judge.

In this way, the right of defence stands as a true procedural support that legitimises the process and the decision adopted, ensures the execution of the principles of equality of arms and equity enshrined in our legislation.

Therefore, the right of defense thus constitutes an indispensable guarantee for the safeguarding of due process and a fair trial, which protects the fundamental rights of the accused.

4. Discussion

1. Challenges in the Review of Police Records by the Defense:

A. Exploration of errors or subjective interpretations in the drafting of police reports.

The exploration of errors or subjective interpretations in the drafting of police reports is a crucial issue in the field of criminal law and criminal procedure, according to Varsi (2019), Article 81 of the procedural code establishes that police records document actions carried out by the National Police in the exercise of its functions, acquiring criminal procedural relevance when they describe an intervention linked to a crime; this highlights the importance of the drafting of police reports being accurate and objective, in addition, Marrufo (2023) points out that the process of drafting and presenting police reports is not exempt from the possibility of errors or subjective interpretations. These errors can affect the validity of evidence presented in criminal proceedings, therefore, it is critical that attention be paid to accuracy and objectivity in the drafting of police records.

Additionally, it is important to consider that Article 68 of the Procedural Code establishes that the record must be signed by the participants or with a fingerprint in case they are unable to sign, Article 334 of the same legal body specifies that the police officers may testify about the facts narrated in their minutes during the criminal hearing. which highlights the importance of accuracy in the drafting of police records; These aspects underscore the need to rigorously address the drafting of police reports to avoid errors or subjective interpretations that may affect the validity of evidence presented in criminal proceedings.

B. Consideration of possible limitations on the review by the defense.

The right of the defense to present observations and questions in police records cannot be limited by factors related to police officers, because of this, Peña (2023) refers to the importance of the right of defense to present observations, but points out that this becomes very relevant in police records after the police officer finishes reporting in the document, since the possibility of reviewing and questioning police records allows defense attorneys to identify possible inaccuracies, omissions, or even situations that may affect the validity of the evidence presented.

Likewise, the process of reviewing and presenting police reports is not exempt from the possibility of errors or subjective interpretations, which may limit the ability of the defense to identify possible problems in police records, according to Marrufo (2023) it is necessary to highlight that the process of drafting and presenting police reports is not exempt from the possibility of errors or subjective interpretations.

On the other hand, Article IX of the Preliminary Title of the Code of Criminal Procedure empowers the accused and his lawyer to intervene and act as evidence at all stages of the process; This right is fundamental to present observations and questions within the process.

2. Impact on Evidence Presented in Criminal Proceedings:

A. Discussion of how observations affect the validity of evidence.

The presentation of observations by the defense in the context of police reports is a legal phenomenon of great relevance for procedural law because such power constitutes a fundamental right and has a significant impact on the validity of the evidence recorded in the police report, therefore, the arguments of Marrufo (2023) were considered, who highlights the importance of scrutinizing the elements of charge and defense within the criminal process through the observations presented by the defense; likewise, Paredes (2022) argues that addressing the defense's observations on police records in the preparatory investigation is essential to guarantee the solidity of the prosecutorial accusation and reduce the chances of acquittal or dismissal in later stages.

On the other hand, Herrera (2021) points out that, if police reports contain inaccuracies, omissions, or errors and are not taken into account or corrected in a timely manner, they can lead to prosecutors dismissing complaints or not filing charges in cases that did merit it, this position suggests that the defense's observations could generate complications in the prosecution of criminal cases.

It is important to consider that the impact of the right to observations on the validity of the evidence recorded in the police report may vary depending on the rigor of the process of reviewing and submitting police records. In this sense, San Martín (2020) highlights that the right of defense guarantees the real possibility of being heard and the issuance of a reasoned decision by the judge, which highlights the importance of observations being supported by solid arguments and concrete evidence.

The right to observations by the defense can have a significant impact on the validity of the evidence recorded in the police report, since it allows questioning possible inaccuracies, omissions, or errors that could affect the course of the criminal process; However, it is crucial that this right be exercised in a reasoned manner and that observations are supported by concrete evidence, in order to ensure the integrity of the process.

B. Evaluation of cases in which observations have been fundamental to the process.

It is important to note that, in the legal and jurisprudential literature, there are examples of cases in which the defense's observations have had a significant impact on the progress and outcome of criminal proceedings. For example, in cases where the defense has submitted substantiated observations that have led to the identification of substantial errors in the content of police records, it has been shown that such observations have contributed to the rectification of inaccurate information or the exclusion of defective evidence, these cases highlight the importance of the defense's observations in ensuring a fair and equitable legal process.

Likewise, situations have been documented in which the defense's observations have led to the review and reconsideration of evidence presented in police records, which has impacted the credibility and solidity of the evidence used in the criminal process, these cases highlight the crucial role that the defense's observations play in safeguarding procedural rights and in the search for procedural truth.

The legal and jurisprudential literature offers examples of situations in which the observations of the defense have been fundamental to the process, contributing to the correction of errors, the exclusion of defective evidence and the review of evidence, which highlights the relevance of this right in the perimeter of criminal law and criminal procedure.

3. Disregard of Qualifying Records of the Public Prosecutor's Office:

A. Analysis of the problem of police reports not taken into account in the preparatory stage.

Article 334 of the Code of Criminal Procedure stipulates that police officers may testify about the facts narrated in their records during the criminal hearing, which implies that police reports have probative value in criminal proceedings; however, in practice, situations have been documented in which police records are not taken into account in the preparatory stage of the criminal process, which can have negative consequences on the soundness of the prosecutorial investigation and the subsequent accusation.

In this sense, Peña (2023) highlights that the possibility of reviewing and questioning police records allows defense attorneys to identify possible inaccuracies, omissions, or even situations that may affect the validity of the evidence presented. Likewise, Rosas (2009) points out that the presentation of observations by the defense allows the judge to analyze the strength and credibility of the evidence for the purposes of issuing a sentence, which highlights the importance of police records being taken into account at all stages of the criminal process.

In this sense, it is important to emphasize that the non-consideration of the observations on the police records presented by the defense can affect the soundness of the prosecutorial investigation and the subsequent accusation. Letting contradictions, gaps, or problems pass at this early stage prevents them from being corrected in time and causes the prosecution to arrive weaker at the oral trial (Fuentes, 2020).

Therefore, the incidents noted in the police records that were not taken into account in the preparatory stage can have negative consequences on the soundness of the prosecutorial investigation and the subsequent accusation, it is important that the police records are taken into account at all stages of the criminal process and that the presentation of observations by the defense is allowed. in order to guarantee the transparency and integrity of the legal process in the Peruvian judicial system.

B. Consequences and possible injustices derived from this situation.

The consequences and possible injustices derived from the situation described in the document are diverse and have a significant impact on the protection of human rights and due process, such as the following:

- Human rights violations: Observations in police records that reflect unfair, discriminatory, and unlawful treatment by police officers, as mentioned in the document, constitute a clear violation of the fundamental rights of detainees. This situation can have a negative impact on the integrity and dignity of persons deprived of liberty. Authors such as Iskandar (2022) and Villafuerte, et al. (2023) have pointed out the exposure of detainees to overcrowding, unsanitary spaces, and inhumane treatment, resulting in a clear violation of their rights.
- Failure to comply with international human rights instruments: Despite the fact that Peru has ratified several international human rights treaties, the practice of inhumane treatment in detention centers is evidence of a failure to effectively implement these international standards. This situation poses challenges in the coordination of norms for the application of the treaties, as mentioned in the Ombudsman's Report No. 98.
- Ignorance and violation of legal norms and jurisprudence: The lack of knowledge on the part of police officers of the recognition and duty to guarantee the rights of detainees, as well as the carrying out of illegal and arbitrary detentions, torture and ill-treatment, as evidenced in Judgment 4587-2004-HC/TC, constitute a clear violation of legal norms and jurisprudence related to respect for the fundamental rights of persons deprived of liberty.

These situations can have an indicative impact on the defense of human rights in the Peruvian legal system, generating injustices and affecting the integrity of imprisoned citizens; it is important to address these problems through effective compliance with international human rights instruments, the constant training of police officers and the establishment of mechanisms to monitor compliance with

and implementation of the obligations arising from the international treaties ratified by Peru, as suggested in the report of the Office of the Ombudsman; it is also crucial that the Peruvian State take concrete measures to guarantee respect for human rights and due process in the criminal justice system, in order to prevent further injustices arising from these situations.

4. Proposals to Improve the Prospection of Tutelas de Derecho:

A. Suggestions for strengthening the role of observations in police records.

It is necessary for the criminal legal system and criminal procedure to strengthen the development of the right to defense within the framework of due process and to guarantee the right to write observations in police records, in this way a more balanced and transparent process will be promoted, therefore, the following is suggested:

- Establishment of training and protocols: It is essential that training programs be implemented for police officers on the importance of writing police reports in a clear, precise and objective manner; In addition, specific protocols must be established for the drafting and presentation of minutes, highlighting the need to document in a detailed and precise manner the circumstances of intervention and the facts verified.
- Guarantee of the right of defense: The full exercise of the right of defense to present observations and questions in relation to police reports must be ensured; This includes making it easier for defense attorneys to review police records in detail, identify potential inaccuracies or omissions, and submit observations in a timely manner.
- Implementation of supervision and control mechanisms: It is necessary to establish supervision mechanisms that allow the performance of the requirements and formalities in the drafting, presentation and content of police reports to be checked; Likewise, control bodies must be created to certify the purity and integrity of the process, avoiding subjective interpretations or the inclusion of biased information in the minutes.
- Promotion of transparency and accountability: Transparency should be promoted in the preparation of police records, ensuring that police procedures and actions are subject to public scrutiny; Likewise, accountability on the part of police officers must be encouraged, establishing mechanisms so that the observations presented by the defense are considered and addressed appropriately.

B. Consideration of adjustments in the review process and submission of comments.

The act of reviewing and presenting observations in police records is the exercise of a right intended to strengthen the role of the defense within the limits of due process, being a guarantee that generates a balance in the face of arbitrariness generated during detention or at any stage of the process where some type of abuse or aggression may be committed. therefore, the following was considered:

- Standardization of review protocols: It is important to implement standardized protocols for the review of police records by the defense, in order to ensure that it is carried out in a thorough and systematic manner, ensuring that possible errors, omissions, or subjective interpretations in the content of the minutes are identified.
- Facilitate access to police records: Mechanisms should be established to guarantee timely access to police records by the defense, allowing them to review the information recorded in detail and present observations effectively.
- Incorporation of observations in criminal proceedings: It is essential that the observations presented by the defence in relation to police records be considered and assessed appropriately in criminal proceedings, giving due importance to any inconsistencies or irregularities identified.

- Supervision of police action: The supervision of police action in the drafting and presentation of minutes must be strengthened, with the aim of reducing the possibility of errors, subjective interpretations or inappropriate practices in the preparation of such documents.

5. Final Thoughts and Recommendations:

A. Synthesis of findings and discussions.

The main results of the research reveal that Peruvian courts are evaluating police interventions and the drafting of the minutes, as well as the rights that are affected during this procedural stage.

The judicial decisions reveal arguments related to detentions, abuses and excesses by police officers in drafting the minutes, which affects the guarantee of the constitutionally recognized right to defense; In addition, significant interpretative patterns were identified through thematic analysis and triangulation of different judicial decisions, which increased the validity of the arguments studied.

B. Recommendations to improve the transparency and integrity of the legal process.

The problem investigated shows the importance of generating a standardization in the procedural rules in force and introducing in the functional protocols of the National Police the duty to endorse the right to review and raise observations in police records, in this way it will be possible to record possible errors, omissions or subjective interpretations in the content of police records; In addition, mechanisms must be established to guarantee timely access to police records by the defense, allowing them to review in detail the information contained and present observations effectively, therefore, the following is recommended:

- Establishment of training and protocols: Implement training programs for police officers on the importance of writing police reports in a clear, precise, and objective manner. Likewise, establish specific protocols for the drafting and presentation of minutes, highlighting the need to document in detail and precisely the circumstances of intervention and the facts verified.
- Guarantee of the right of defense: Ensure the full exercise of the right of the defense to present observations and questions in relation to the police records, including the facilitation of detailed review of the minutes by defense attorneys to identify possible inaccuracies or omissions.
- Implementation of supervision and control mechanisms: Establish supervision mechanisms to verify compliance with the requirements and formalities in the drafting, presentation and content of police reports. In addition, create control bodies that guarantee the transparency and integrity of the process, avoiding subjective interpretations or the inclusion of biased information in the minutes.
- Promoting transparency and accountability: Promoting transparency in the preparation of police records, ensuring that police procedures and actions are subject to public scrutiny. Likewise, promote accountability on the part of police officers, establishing mechanisms so that the observations presented by the defense are considered and addressed appropriately.

C. Future implications for the Peruvian judicial system in the prospection of tutelas de derecho through observations in police records.

These implications point to a strengthening of the Peruvian judicial system by promoting practices that safeguard fundamental rights in criminal proceedings, contributing to greater transparency, justice, and respect for human rights.

- Strengthening the right to defense: The emphasis on allowing observations in police records will promote a more balanced and transparent process, strengthening the exercise of the right to defense within the framework of due process.

- Improvement in the quality of police actions: The implementation of supervision and control mechanisms, as well as the standardization of review protocols, will favor the improvement of the quality and transparency of police actions, reducing the possibility of subjective interpretations or inappropriate practices in the drafting of minutes.
- Guarantee of access to information: Timely access to police records by the defense, and adequate consideration of the observations presented, will ensure that possible inconsistencies or irregularities in the criminal process are taken into account, thus strengthening its integrity.

4. Conclusion and future scope

First. It is concluded that the Peruvian judicial system faces serious challenges in terms of the transparency and integrity of legal processes. A critical aspect is the preparation and review of police reports, where potential problems related to objectivity, precision and coherence in their drafting have been identified. These problems not only compromise the quality of documentary evidence, but can also negatively influence the fairness and fairness of criminal proceedings, directly affecting public confidence in the justice system.

Second. It is concluded that the effective exercise of the right to defense is seriously affected during the procedural phase of preparing the police reports. The lack of adequate defense participation at this critical stage limits the ability to ensure a fair and equitable trial. This represents a significant violation of the principles of due process, compromising the transparency and integrity of the judicial system, and exposing the accused to potential legal injustices.

Third. It is concluded that judicial supervision and protection of the preparation and validation of police reports require greater attention and strengthening. The lack of adequate mechanisms to ensure transparency and integrity in this aspect of criminal proceedings puts at risk the protection of the fundamental rights of the parties involved. Therefore, it is recommended to implement effective measures of judicial control and review to ensure that police reports are objective, impartial, and reliable, in order to contribute to the strengthening of the Peruvian justice system

Reference

- [1] Amnesty International (2014). Torture in 2014: 30 Years of Broken Promises. <https://www.amnesty.org/en/documents/act40/004/2014/en/>
- [2] Amnesty International. (2018). Jurisprudence of the Inter-American Court of Human Rights on Personal Integrity, Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. <https://www.amnesty.org/>
- [3] Amnesty International. (2022). Arbitrary detentions and police abuse in Peru: The criminal justice crisis. Amnesty International.
- [4] United Nations General Assembly. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/es/universal-declaration-human-rights/>
- [5] United Nations General Assembly. (1948). Universal Declaration of Human Rights. Retrieved from <https://www.un.org/es/about-us/universal-declaration-of-human-rights>
- [6] United Nations General Assembly. (1966). International Covenant on Civil and Political Rights. Retrieved from <https://www.un.org/es/documents/udhr/dohrspanish.pdf>
- [7] United Nations General Assembly. (1979). Code of Conduct for Law Enforcement Officials. Retrieved from https://www.unodc.org/pdf/crime/legislacion/2009_code_of_conduct_spanish.pdf
- [8] United Nations General Assembly. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from <https://www.un.org/es/documents/udhr/dohrspanish.pdf>

- [9] United Nations General Assembly. (1984). Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from <https://www.ohchr.org/es/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading>
- [10] United Nations General Assembly. (1988). Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. Retrieved from <https://www.unhchr.ch/spanish/hrechr70.htm>
- [11] United Nations General Assembly. (1990). Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Retrieved from https://www.un.org/es/documents/ga/res/45/a45r158_sp.pdf
- [12] United Nations General Assembly. (2002). Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Retrieved from <https://www.ohchr.org/es/instruments-mechanisms/instruments/optional-protocol-convention-against-torture-and-other-cruel>
- [13] Ayala, R. (2008). M.'s phenomenological-hermeneutical methodology Van Manen in the field of educational research. Possibilities and first experiences. *Journal of Educational Research*, 26(2), 409-430. <https://doi.org/10.6018/rie.26.2.110061>
- [14] Baena, G. (2017). Research methodology. Grupo Editorial Patria.
- [15] Barreto, P. (2022). Voluntary expressions of intervened persons registered in police intervention acts and their legal validity in trial [Master's thesis, César Vallejo University]. Institutional Digital Repository. <https://hdl.handle.net/20.500.12692/106738>
- [16] Bramont-Arias, L. & García Cantizano, M. (2016). Manual of the Right of Defence. Pacific Institute.
- [17] Braun, V., Clarke, V., & Hayfield, N. (2019). A starting point for your journey: A reflexive thematic analysis workshop. British Psychological Society Annual Conference, Harrogate, UK.
- [18] Burgers, J. & Danelius, H. (1988). The United Nations Convention Against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Martinus Nijhoff.
- [19] Caro, J. (2020). Crimes against public faith. Legal Editions.
- [20] Carozza, P. (2013). Human Dignity and Judicial Interpretation of Human Rights: A Reply. *European Journal of International Law*, 19(5), 931–944.
- [21] Human Rights Center of the Catholic University of Peru. (2021). Arbitrary detentions in Peru: An analysis of the evidence. Human Rights Center of the Catholic University of Peru.
- [22] Chamorro, F. (1994). Evidence in civil proceedings. Palestra Editores.
- [23] Cleveland, J., Rousseau, C., & Kronick, R. (2018). The harmful effects of detention and family separation on asylum seekers' mental health in the context of Bill C-31. *Canadian Journal of Public Health*, 109(2), 145-146.
- [24] Cohen, J. (2008). Safe in our hands?: A study of suicide and self-harm in asylum seekers. *Journal of Forensic and Legal Medicine*, 15(4), 235-244.
- [25] Inter-American Commission on Human Rights (IACHR). (2022). Report on the situation of human rights in Peru. IACHR.
- [26] Inter-American Commission on Human Rights. (2011). Report No. 76/11 Case 11.769 A Merits J. Peru. (Series C No. 275). Retrieved from https://www.corteidh.or.cr/docs/casos/articulos/seriec_275_esp.pdf
- [27] Inter-American Commission on Human Rights. (2013). Report on the Human Rights of Persons Deprived of Liberty in the Americas. <https://www.cidh.oas.org/privados/informes.htm>
- [28] International Committee of the Red Cross (ICRC). (2017). Enforced disappearances. <https://www.icrc.org/es/desapariciones-forzadas>
- [29] International Committee of the Red Cross. (2019). Persons deprived of liberty in Peru. <https://www.icrc.org/>
- [30] National Coordinator of Human Rights. (2019). Annual Report on the Situation of Human Rights in Peru. <https://derechoshumanos.pe/>
- [31] Constitutional Court of Colombia. (1998). Judgment T-153/98. M.P. Eduardo Cifuentes Muñoz.

- [32] European Court of Human Rights. (2006). Case of Ramírez Sánchez v. France (59450/00). Judgment of July 4, 2006. ECHR 2006-IX.
- [33] Inter-American Court of Human Rights. (2004). Case of "Institute for the Reeducation of Minors" v. Paraguay. Judgment of September 2, 2004. Series C No. 112.
- [34] Inter-American Court of Human Rights. (2004). Institute for the Reeducation of Minors vs. Paraguay. <https://www.corteidh.or.cr/>
- [35] Inter-American Court of Human Rights. (2016). Case of J. et al. v. Peru. Judgment of November 27, 2016. Retrieved from https://www.corteidh.or.cr/docs/casos/articulos/seriec_320_esp.pdf
- [36] Supreme Court of Justice of the Argentine Nation. (2005). Verbitsky, Horacio s/ habeas corpus. V. 856. XXXVIII. Appeal of fact. Judgment of May 3, 2005.
- [37] Ombudsman's Office. (2007). International human rights treaties and national legislation. Ombudsman's Report No. 98. <https://www.defensoria.gob.pe/wp-content/uploads/2018/05/Informe-98.pdf>
- [38] Ombudsman's Office. (2021). Annual Report 2021. Ombudsman's Office.
- [39] Ombudsman's Office. (2021). National Mechanism for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Ombudsman's Office.
- [40] Fuentes, A. (2020). Importance of the preparatory stage in the accusatory criminal process. *Revista de Derecho Procesal*, 8(1), pp. 44-65.
- [41] Herrera, L. (2021). Police reports: frequent omissions and inaccuracies. *Criminal Investigation*, 104(2), pp. 33-55. DOI: <https://doi.org/10.15446/ic.v104n2.96584>
- [42] Human Rights Watch (HRW). (2020). Egypt: Security Forces Abuse, Torture LGBT People. <https://www.hrw.org/news/2020/10/01/egypt-security-forces-abuse-torture-lgbt-people>
- [43] Indepaz. (2022). Arbitrary detentions in Peru: The crisis of the criminal justice system. Indepaz.
- [44] Institute of Legal Defense. (2020). Arbitrary detentions and police abuse in Peru: A legal analysis. Institute of Legal Defense.
- [45] Iskandar, S. (2022). The effectiveness of the implementation of the rights of women assisted citizens in realizing the purpose of Penitentiary in Penitentiary Class II A Rantauprapat. *International Journal Of Humanities Education and Social Sciences*, 1(6), pp. 850-858. EBSCO. <https://doi.org/10.55227/ijhess.v1i6.169>
- [46] Marrufo, L. (2023). Legal Bases that Allow the Modification of Article 210 of the Code of Criminal Procedure Regarding the Police Procedure of Personal Search [Master's thesis, National University of Cajamarca]. Institutional Repository. <http://hdl.handle.net/20.500.14074/5982>
- [47] Melzer, N. (2020). Torture and other cruel, inhuman or degrading treatment or punishment. <https://undocs.org/A/75/179>
- [48] Mitchell, G., & MacKenzie, G. (2018). The health impacts of immigration detention: A global perspective. *Rights, Deprivation and Resistance in Immigration Detention*, 11-25.
- [49] Monje, C. (2011). Quantitative and qualitative research methodology. Universidad Surcolombiana.
- [50] Monroy, J. (1996). Introduction to Civil Procedure. Palestra Editores.
- [51] Ni Aolain, F. (2016). Analyzing torture testimony. *New York University Public Law and Legal Theory Working Papers*, 483.
- [52] Ñaupas, H., Valdivia, M., Palacios, J., & Romero, H. (2018). Quantitative-qualitative research methodology and thesis writing. Ediciones de la U.
- [53] Okuda, M. & Gómez-Restrepo, C. (2005). Methods in qualitative research: triangulation. *Colombian Journal of Psychiatry*, 34(1), 118-124.
- [54] OMCT. (2022). Arbitrary detentions and police abuse in Peru: A violation of human rights. OMCT.
- [55] Paredes, J. (2022). The technical defense in the preparatory investigation and its impact on the trial. *Adversarial Criminal Justice*, 15(2), pp. 77-99. DOI: <https://doi.org/10.36105/jpa.v15n2.1204>

- [56] Pariona, R. (2019). Documentary evidence in criminal proceedings. Pacific Institute.
- [57] Peña, K. (2023). Implications of irregularities committed in police intervention acts in flagrante delicto as evidence in a criminal proceeding Lima 2023 [Master's thesis, César Vallejo University]. Institutional Digital Repository. <https://hdl.handle.net/20.500.12692/126416>
- [58] Pérez, L. (2010). The prohibition of torture and other cruel, inhuman or degrading treatment. In J. Zúñiga (Ed.), *Derecho Internacional de los Derechos Humanos* (pp. 47-74). National Autonomous University of Mexico. PDF.
- [59] Rivera, C. (2017). The human rights of detainees in Peru. Pontificia Universidad Católica del Perú.
- [60] Robjant, K., Hassan, R., & Katona, C. (2019). The impact of immigration detention on mental health: a systematic review. *Br J Psychiatry*, 197(5), 371-377.
- [61] Rosas, J. (2009). Criminal Procedural Law with application to the new criminal procedure. Jurista Editores.
- [62] San Martín, C. (2020). Criminal Procedural Law Lessons. Pacific Institute.
- [63] Constitutional Court of Peru. (2004). Judgment 4587-2004-HC/TC. <https://www.tc.gob.pe/jurisprudencia/2006/04587-2004-AA.pdf>
- [64] Constitutional Court of Peru. (2006). Judgment 0006-2006-PI/TC. <https://www.tc.gob.pe/jurisprudencia/2007/00006-2006-CC.html>
- [65] Constitutional Court of Peru. (2021). Judgment 738/2021. <https://tc.gob.pe/jurisprudencia/2021/01146-2021-AA.pdf>
- [66] Varsi, E. (2019). Treatise on Criminal Procedural Law. Grijley.
- [67] Villafuerte, S., Bea, C., Florin, M., Gadil, J., Lana, M. (2023). Phenomenology of Prison Crowding among Filipino young adult detainees. *Advance Social science & Humanities*, pp. 1-21. EBSCO. DOI: <https://doi.org/10.31124/advance.23612214.v1>.