



**Alan Garcia’s Second Chance:  
Human Rights Accountability in Peru**  
July 2006

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## Introduction

On July 28, Alan García Pérez will be sworn in for his second term as president of Peru. An important question raised by García's return to office is whether he will address Peru's ongoing failure to bring to justice the perpetrators of egregious human rights abuses that accompanied the country's long internal armed conflict, including abuses that marred his first term in office.

García first served as president from 1985 to 1990, at the height of a bloody civil conflict in which an estimated 69,000 people lost their lives, many of them victims of atrocities committed by irregular armed groups and by government forces. He left office in 1990 with political violence unchecked and abuses on both sides unpunished.

García was replaced by President Alberto Fujimori, who governed until 2000, when he left the country for Japan in the midst of a major political corruption scandal. Fujimori is now in Chile facing possible extradition to Peru on charges of corruption and human rights abuse. In 2003, Peru's Truth and Reconciliation Commission published a report documenting thousands of abuses committed by both illegal armed groups and state security forces during the armed conflict.

This briefing paper assesses Peru's mixed record to date in establishing accountability for the massive human rights abuses of the 1980s and 1990s. It identifies and examines the main obstacles that have hindered the investigation and prosecution of these cases. It concludes by recommending specific steps the new administration can take to overcome the obstacles and advance the rule of law.

## History of Violence

More than 60,000 people died or "disappeared" in the conflict that ravaged Peru during the 1980s and 1990s, according to Peru's Truth and Reconciliation Commission. The Shining Path, a Maoist illegal armed group, killed about half the victims, and roughly one-third died at the hands of government security forces, according to the report. The commission attributed some of the other slayings to a smaller illegal armed group and to peasant self-defense brigades (*rondas campesinas*) acting in support of the armed forces.

Of the 23,149 recorded victims of the twenty-year conflict, only 642 died in actual combat.<sup>1</sup> Many perished in massacres carried out by military forces in several rural departments. The worst affected was Ayacucho, with grave incidents at Quillispacta (1983), Accomarca (1985), and Cayara (1988), among others. Other mass killings and executions took place in prisons in Lima (El Frontón and Lurigancho in 1986) and in the Upper Huallaga region of Huánuco and San Martín (1989-1994), among other sites. At certain periods, torture and “disappearances” were widely practiced at military bases such as Los Cabitos (Ayacucho), Santa Rosa (Apurímac), Huancayo (Junín), and Countersubversive Battalion N° 313 (Huánuco).

During the government of Alan Garcia, Peru had the highest number of forced disappearance cases of any country in the world, according to the United Nations’ Working Group on Disappearances.<sup>2</sup>

### **Limited Results in Prosecuting Past Abuses**

The hardship caused by these atrocities was compounded by Peru’s failure to ensure that the perpetrators were brought to justice. In the case of abuses committed by the illegal armed groups, instead of providing justice, the state resorted in the 1990s to trials that lacked the basic procedural guarantees needed to ensure that the people convicted were in fact the ones who committed the crimes.

In the case of government abuses, no serious effort was made to investigate and prosecute those responsible. Military tribunals convicted several officers for abuses in the 1980s and 1990s, but the convictions were usually limited to less serious crimes like “abuse of authority,” and top-ranking officers escaped prosecution. Those convicted often remained on active service and some were even promoted. Most, if not all, convictions were annulled under a broad amnesty law introduced by the Fujimori government in 1995.<sup>3</sup>

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<sup>1</sup> *Final Report of the Truth and Reconciliation Commission*, Lima: August, 2003, Anexo Estadístico, p.15. [http://www.cverdad.org.pe/ifinal/pdf/AESTADISTICO/ANEXO%20ESTAD%CDSTICO\(PARA%20CD\).pdf](http://www.cverdad.org.pe/ifinal/pdf/AESTADISTICO/ANEXO%20ESTAD%CDSTICO(PARA%20CD).pdf) (retrieved September 2, 2005).

<sup>2</sup> In 1987, according to U.N. figures, 559 forced disappearances took place worldwide, of which almost one-fourth, 133, occurred in Peru. In 1988 this proportion declined slightly, but Peru remained the nation with the highest number of new “disappearances” in the world (230). In 1989 out of 975 new “disappearances” registered worldwide by the U.N., Peru had a staggering 440. United Nations, Economic and Social Council, Report of the Working Group on Forced or Involuntary Disappearances, app I.pp.101,116. See Americas Watch, *Peru Under Fire: Human Rights Since The Return of Democracy* New York: Americas Watch, 1992, p. 90.

<sup>3</sup> For example, Lt. Telmo Hurtado Hurtado, who commanded one of the patrols responsible for the Accomarca massacre in 1985, was sentenced in February 1992 to 6 years’ imprisonment for “abuse of authority,” after the military tribunal dismissed murder charges. The Supreme Council of Military Justice confirmed the sentence a

Since the 2003 publication of the truth commission report, Peru has made some important progress in investigating and prosecuting past abuses. But it has a long way to go, especially when it comes to abuses committed by state actors.

### ***Accountability for abuses by illegal armed groups***

In the 1990s, Peru prosecuted thousands of members or followers of the Shining Path and the other armed group active during the period, the Túpac Amaru Revolutionary Movement (MRTA). Their trials for terrorism and treason were conducted under antiterrorism legislation introduced by President Fujimori in 1992 shortly after he had dissolved Congress and assumed executive control of the government. Many were judged by military tribunals and “faceless” courts whose members wore hoods to prevent their identification.<sup>4</sup> The trials violated basic norms of due process and punished hundreds of innocent civilians, who were convicted and sentenced to long prison terms under harsh conditions.

In 1999 the Inter-American Court of Human Rights ordered Peru to give prisoners convicted under the terrorism laws a new trial by an independent and impartial court.<sup>5</sup> In January 2003, the Constitutional Court declared parts of the 1992 antiterrorism legislation to be unconstitutional. The following month, the National Criminal Court annulled 738 treason and terrorism verdicts in Lima and 754 verdicts in the provinces, and set about retrying the cases.

Since then, courts have made significant progress in prosecuting members and supporters of illegal armed groups, using procedures that respect rights to defense and due process. They have passed judgment in at least 319 cases, with 220 defendants being acquitted and 287 convicted and sentenced to prison terms ranging from 3 to 30 years.<sup>6</sup> More than 140 cases now remain to be judged.<sup>7</sup>

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year later, but in June 1995 it was annulled under the amnesty law. Hurtado was discovered in 1998 to be serving in a military base in Cajamarca department, with the rank of major.

<sup>4</sup> Human Rights Watch published two reports on the egregious due process violations of the faceless courts. See *Peru: The Two Faces of Justice, Vol 7, No. 9*, New York: Human Rights Watch, July 1995, and *Presumption of Guilt: Human Rights Violations and the Faceless Courts in Peru*, Vol. 8, No. 5(B), New York: Human Rights Watch, August 1996.

<sup>5</sup> Inter-American Court of Human Rights, *Caso Castillo Petruzzi and others*, judgment of November 17, 1999.

<sup>6</sup> Carlos Rivera Paz, Amado Enco Tirado and Tania Valle Manchego, *Sala Penal Nacional: El Trabajo en Casos De Terrorismo* (Lima: Justicia Viva, March 2005), pp. 12-24.

<sup>7</sup> Oscar Castilla, “Juicios por terrorismo en su etapa final: solo quedan 144 procesos por resolver,” *El Comercio*, June 28, 2006.

While most of these cases involve crimes such as treason, or collaborating with a terrorist organization, some involve responsibility for past atrocities. For example, a notorious massacre of sixty-nine civilians perpetrated by the Shining Path at Lucanamarca, Ayacucho department, in April 1983 is part of a mega-trial of Shining Path leaders now underway before the National Criminal Court at the naval base of Callao. Prosecutors are also investigating other notorious incidents described by the truth commission in its report, including the murder of five villagers at Canchacancha, Ayacucho in 1983, and of forty-seven members of peasant self-defense brigades (*ronderos*) at Huayao in October 1992.

### **Accountability for government abuses**

Peru has made far less progress in prosecuting government atrocities. Of the thousands of documented abuses, only a handful of cases have been resolved. Only ten people have been convicted. And only one of these, a police colonel, had been a commanding officer.

Yet, here too, there is reason to hope that justice is within reach. Genuine efforts are underway to prosecute many of these cases, including those that implicate some of the most prominent figures in Peruvian politics today. At least thirty-seven cases are being investigated by judges who have already filed charges. At least 188 cases are still under preliminary examination by prosecutors.<sup>8</sup>

In December 2005, three peasant self-defense brigade members from Río Negro, Junín, were sentenced to ten years imprisonment after being convicted of killing ten members of the community of Pichanaki in September 1993. In March, 2006, a police colonel and three junior officers were convicted and sentenced to sixteen years of imprisonment and three junior officers to fifteen years, for the “disappearance” in October 1990 of student Ernesto Castillo Paez—the first ever sentence in Peru for a forced disappearance.

The most notable progress to date has come in the case of the Colina Group death squad, an army unit active in the early 1990s. Three members of the group were sentenced in September 2005 to between four and six years of imprisonment under an arrangement which allows rapid sentencing for those who choose not to contest criminal charges. The Colina mega-trial, in which fifty-seven individuals linked to the death

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<sup>8</sup> These are minimum estimates. The figures correspond to cases presented by human rights groups affiliated to the National Human Rights Coordinator (CNDDHH), a non-governmental human rights umbrella group. Other cases have been presented by the Truth and Reconciliation Commission, the Human Rights Ombudsman, and by private individuals. “Relación de casos que se encuentran en estudio por organismos de la CNDDHH, casos en fiscalía y en poder judicial,” Lima, July 2006 (unpublished document).

squad currently face charges for the notorious Barrios Altos and La Cantuta massacres (in 1991 and 1992, respectively), as well as other crimes, is still underway.

The prosecution of the Colina case is the result of a broader series of investigations into the systematic and widespread corruption and abuse of the Fujimori government. These investigations have produced more than 275 prosecutions against more than 1,780 individuals. So far, these prosecutions have resulted in more than sixty convictions of people for corrupt acts, human rights abuses, or other crimes.

In large measure, this progress has occurred because Presidents Paniagua and Toledo made the investigation and prosecution of the Fujimori regime's crimes a top priority. Of particular importance has been their support for the Ad-Hoc Solicitor's Office (*Procuraduría Ad-Hoc*), responsible for investigating corruption and other crimes committed by the Fujimori government. The Ad-Hoc Solicitor's Office, with its highly qualified personnel and efficient use of resources, was able to give these delicate cases the sustained, focused attention that they required, contributing to and energizing the investigations, and producing unusually positive results.

Efforts to prosecute abuses that occurred during and before García's previous presidency have not benefited from the contribution of the Ad-Hoc Solicitor's Office, whose mandate is limited to cases involving Fujimori and his intelligence chief, Vladimiro Montesinos. Nonetheless, five key cases from the 1980s are now in open court in Lima, or are expected to come to trial in the coming months.

## **Obstacles to Justice**

Efforts to investigate and prosecute past abuse cases have been severely hindered by two major obstacles: the military's unwillingness to cooperate with civilian investigators, and the prosecutor's lack of resources and support.

### ***Lack of military cooperation***

For years, the Peruvian military has systematically blocked efforts to hold its personnel responsible for the abuses they committed during the internal armed conflict. Until a Supreme Court decision recently ended the practice, the military used its own justice system to preempt prosecutions of these crimes in civilian courts. It continues to refuse to turn over vital information to civilian prosecutors investigating these cases.

### ***Military jurisdiction***

Until recently, the military managed to preempt prosecution of military abuses in civilian courts by asserting jurisdiction over the cases and frequently acquitting the accused. The Peruvian Supreme Court sanctioned this practice, according to the country's truth commission, by "ruling each conflict of jurisdiction in favor of military courts, in which the crimes went unpunished."<sup>9</sup> As noted above, the few who were convicted by military courts benefited from an amnesty law introduced by the Fujimori government in 1995.

The Constitutional Court and the Supreme Court put an end to this practice in 2004 with back-to-back rulings that held that human rights cases must be tried in civilian courts. Yet even after these rulings, the military authorities resisted yielding such cases to civilian jurisdiction. The country's Human Rights Ombudsman reported in 2005 that the military was delaying for months before handing over the results of their investigations to civilian prosecutors. For example, after the Supreme Court resolved a jurisdictional dispute regarding a case of forced disappearances in the Chuschi community in Ayacucho, military authorities waited eight months before remitting the case files to their civilian counterparts.<sup>10</sup>

### ***Failure to provide information***

If there is one entity that could contribute the most to the effort to resolve these cases, it is the Peruvian military. Military personnel participated in many—if not most—of the government atrocities, and the institution itself is directly implicated in many of the abusive practices. The Peruvian military has a clear obligation to advance efforts to resolve these crimes and ensure that those responsible are brought to justice.

Yet the military has consistently refused to turn over relevant information to civilian investigators. When the truth commission, for example, requested the names of military personnel stationed in counterinsurgency bases during the conflict, Ministry of Defense and military officials responded with template bureaucratic language that was almost invariably of no help.<sup>11</sup>

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<sup>9</sup> *Informe Final*, Vol. VIII, Conclusiones Generales, No. 123. <http://www.cverdad.org.pe/ifinal/pdf/TOMO%20VIII/CONCLUSIONES%20GENERALES.pdf> (retrieved July 4, 2005).

<sup>10</sup> Human Rights Watch interview with Pablo Talavera, president of the Nacional Criminal Court, Lima, August 12, 2005. Corte Suprema de Justicia, Primera Sala Penal Transitoria, Competencia No. 29-04, 14 de diciembre de 2004.

<sup>11</sup> Human Rights Watch has copies of numerous memos addressed to the Truth and Reconciliation Commission relating to different military bases. For example, from Gen. Luis Alberto Muñoz, Oficio.No. 020 DP-SDAPE 1-3, dated 1983; from Viceadm. Carlos Tubino Arias, Jefe del Estado Mayor de la FFAA Oficio No. 518 EMCFFAA/D1/AACC-DDHH-2, dated February 20, 2003; from Gen. Luis Alberto Muñoz, Oficio.No 2419-DP-SDPREBE 2A1/29.01.00, dated August 22, 2003; from Dra. Millitza Franciskovic, General Secretariat, Ministry

Criminal prosecutors have received equally unhelpful responses. Human Rights Watch has copies of official replies from the Ministry of Defense to the attorney general and the Ayacucho special prosecutor Cristina Olazábal which are strikingly similar to those received by the truth commission. One states that the army had no information on file about the identity of military personnel stationed in September 1989 and June 1990 at the Los Cabitos base in Ayacucho.<sup>12</sup> It is all but inconceivable that no records exist of who was stationed at the base, given that it was the nerve center of army operations in Ayacucho during the conflict. At a minimum, one would have expected the army to explain such an extraordinary response, but the reply includes none.

The military has claimed more generally that it did not preserve information on the personnel who carried out operations from rural outposts.<sup>13</sup> This claim has little credibility. Normal administrative and disciplinary procedures require that records be kept, particularly of operations conducted in sensitive combat zones. And, in fact, records documenting the names of patrol members and logs of military operations have been turned over to congressional investigative committees in the past.<sup>14</sup>

Equally unconvincing is the military's assurances that it has not preserved any records of the aliases used by soldiers serving in the emergency zones during the conflict. This information is vital to prosecutors as many local people knew soldiers only by the pseudonyms they used as a security measure. While successive defense ministers have claimed that these names were used informally and not recorded in official records, the aliases have in fact turned up in official records brought to light by several ongoing investigations.

For example, documents discovered by Judge Victoria Sánchez in the headquarters of the Army Intelligence Service in April 2002 included a list of the members of the Colina death squad, together with their aliases, information that now forms part of the dossier presented by the Peruvian government for Fujimori's extradition from Chile.

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of Defense, Oficio No.2952. MINDEF/K-6-CVR, dated August 11, 2003; from Dra. Millitza Franciskovic, General Secretariat, Ministry of Defense, Oficio No.2810 MINDEF/K-6-CVR, dated July 6, 2003.

<sup>12</sup> Memos from Dra. Millitza Franciskovic, secretary general of the Ministry of Defense to Attorney General Nelly Calderón dated July 6, 2004, Ref: 678 SGMD-C/1 and 679 SGMD-C/1.

<sup>13</sup> In August 2005 the minister of defense at the time, Roberto Chiabra, told Human Rights Watch that information on the personnel who carried out operations from rural military outposts during the conflict was generally not recorded. Human Rights Watch interview with Roberto Chiabra, Lima, August 12, 2005.

<sup>14</sup> An example is the congressional investigation into the 1985 massacre at Accomarca in Ayacucho. Comisión Investigadora de Violación de Derechos Humanos Caso Accomarca-Llocllapampa y Fosas Clandestinas de Pucayaccu, Archivo General del Congreso, Vol 2.

Another example involves the case of Bernabé Baldeón García, a 68-year-old *campesino* from Ayacucho who died in September 1990 after being tortured by members of an army patrol. A criminal investigation of the case went nowhere for twelve years due to the failure of the army to provide the real name of the commander of the army outpost at Accomarca, who had gone by the name of “Lt. Morán.” However, in September 2002, an army inspector stated in a memo to headquarters in Lima that the real name of “Lt. Morán” had been discovered during a search of personnel records at an army base at Cangallo, Ayacucho. The alias had apparently been used by Lt. José Urbina Carrasco, a cavalry officer still in active service when the discovery was made.<sup>15</sup> Urbina now faces charges of torture resulting in death.

Perhaps the most prominent recent example of the military’s stonewalling involves the case of former presidential candidate Ollanta Humala. Earlier this year, serious allegations emerged that Humala, under the pseudonym of “Captain Carlos,” had tortured and “disappeared” civilians while stationed at the Madre Mía military base in the San Martín region in 1992 and 1993. Humala denies the allegations. In an interview published in February 2006, the minister of defense at the time, Marciano Rengifo, denied that records were kept that could confirm Humala’s use of the alias.<sup>16</sup> Yet such a record does exist. Human Rights Watch has seen the declaration of an army major who was interviewed in November 1992 by a military officer investigating allegations of drug-trafficking at the Madre Mía base. In his declaration, the officer, Maj. Jorge Flores Tello, said to be the immediate superior of Humala, gave the names and aliases of several officers at the base, including that of Humala, whom he identified as “Humala Tasso, Ollanta, ‘Carlos.’”<sup>17</sup>

These examples suggest that much more information could be made available to courts if the Ministry of Defense felt obliged to do so. And if there indeed are cases where records were lost or destroyed, it should be possible for the armed forces to obtain the required information by conducting a simple investigation, such as by interviewing officers known to have been stationed at the time at the base in question.

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<sup>15</sup> Memo from Gen. Felipe Villagra Barriga to the general secretary of the general commander of the army, dated September 30, 2002. Oficio No. 723/SRM/K-1/20.04

<sup>16</sup> Américo Zambrano, “El Capitán Carlos no existe,” *Caretas*, 1912, February 16, 2006.

<sup>17</sup> Declaration of Maj. Jorge Flores Tello, November 26, 199, given to a military prosecutor investigating alleged drug-trafficking at the Madre Mía base. The document was published in the newspaper *La República*. Edmundo Cruz y Elizabeth Prado, “Ollanta Humala y sus soldados golpearon y raparon a mujer,” *La República*, February 5, 2006

### **Lack of resources**

Another important obstacle has been the fact that the prosecutors in charge of these cases have not received the resources they need to carry out what are often very difficult investigations.

In 2002, largely due to the insistence of the Inter-American Commission on Human Rights, the government appointed a special prosecutor, based in Lima, to focus on abuses committed by government forces. A year later, it appointed another prosecutor based in Ayacucho to work exclusively on human rights cases from that department, the one hit hardest by political violence in the 1980s. Both prosecutors worked with the assistance of the Institute of Legal Medicine, the forensic branch of the Attorney General's Office. Jointly with the truth commission, they began the long and arduous task of exhuming and identifying victims of "disappearances" and extrajudicial execution.

Although the government thus took the first step toward tackling the hundreds of stalled human rights cases, it failed to develop and adequately fund the prosecutorial system. It provided insufficient resources for the new offices to function efficiently, and it failed to appoint prosecutors in other zones where there was an equally pressing need for specialized investigators, ignoring the recommendation of the truth commission in this respect.

The special prosecutors in Lima and in Ayacucho were given no budget to cover basic expenses such as computers, telephones and faxes, and transportation. All the money at their disposal came from the existing public ministry budget and from foreign donors.

Whereas the Ad-Hoc Solicitor's Office investigating the Fujimori government employs around fifty people to work exclusively on corruption and human rights cases, the resources devoted to the investigation of the abuses of the previous decade have been much more modest. The office of the Ayacucho special prosecutor, who is responsible for investigating around 200 cases, has only six staff members and lacks basic facilities such as a fax machine.<sup>18</sup>

In 2003 and 2004 the attorney general issued directives putting provincial prosecutors in charge of human rights cases in Junín, Huancavelica, and Coronel Portillo. A more recent directive, in August 2005, widened the mandate of provincial prosecutors in the judicial districts of Ancash, Cajamarca, Cusco, Huánuco, Junín, La Libertad, and Piura to include crimes against humanity and human rights cases. However, these officials also

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<sup>18</sup> Human Rights Watch telephone interview with special prosecutor Cristina Olazábal, July 14, 2006

have to shoulder their normal work load, often totaling hundreds of cases unrelated to human rights, and have no additional material or staff resources.

Very recently, the attorney general appointed a second special prosecutor for human rights in Ayacucho to lighten the workload of Cristina Olazábal, who has held this post since December 2003 and was responsible for about 400 cases. This long overdue decision is welcome. However, the logistical problems of the prosecutor's office continue. To obtain money for the fuel needed to travel to interview witnesses or attend an exhumation in a remote location, Olazábal has to apply in writing for funds to Lima, a cumbersome 10-day procedure. She often has to pay travel and accommodation costs out of her own pocket and then seek reimbursement, a process that can take six weeks. There is no budget to cover unforeseen requirements such as a new tire. In addition, the six staff members in her office share four computers and have no fax. Only one training course has been provided since the office was established in December 2003.<sup>19</sup> These constraints inevitably affect the ability of the prosecutor's office to function effectively.

## **Recommendations**

Human Rights Watch has written to President-elect Alan García urging him to make the investigation and prosecution of human rights abuses committed during Peru's internal armed conflict in the 1980s and 1990s a government priority. Specifically, we have asked him to:

### **1) *End military obstruction***

The military has more to contribute to the investigation and prosecution of these crimes than any other state institution, but both the military leadership and Ministry of Defense, which oversees the military, have dragged their feet and not collaborated in a meaningful fashion, violating their obligation to Peruvian society to uphold the rule of law. The most effective way to ensure progress in promoting human rights accountability is for the president to order the Ministry of Defense and military to end this obstructionism. The Ministry of Defense and military should do all they can to locate documents and information requested by prosecutors investigating human rights cases. They should also ensure the prompt arrest of military personnel subject to arrest warrants for these crimes.

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<sup>19</sup> Ibid.

## **2) Encourage greater support for human rights prosecutors**

The ability of prosecutors to investigate and prosecute human rights cases has been seriously undermined by the state's failure to provide them adequate resources and support. While it is up to the Attorney General's Office, and not the president, to determine the allocation of resources to prosecutors, the president could still play an important role in actively encouraging the attorney general to prioritize these cases.

## **3) Continue support for the Ad-Hoc Solicitor's Office**

The president should ensure the Ad-Hoc Solicitor's Office investigating the Fujimori government continues to operate with the resources, personnel, and political support it has received until now. Many of the cases it has advanced are now at critical junctures. The Colina case is approaching its final stages, and numerous convictions are now within reach. Moreover, in the likely event that Chile extradites Fujimori in the near future, the Ad-Hoc Solicitor's Office could play a critical role in ensuring that he is vigorously prosecuted for his alleged crimes.