

PERU

PRESUMPTION OF GUILT Human Rights Violations and the Faceless Courts in Peru

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I. SUMMARY AND RECOMMENDATIONS

Summary

The incarceration of hundreds of innocent prisoners charged or convicted of terrorist crimes they did not commit is now an open secret in Peru. While there may be disagreement about the numbers unjustly prosecuted by Peru's "faceless courts," no one in Peru, including the architect of the court system, President Alberto Fujimori, denies that the problem exists. Those caught up in the system are presumed guilty and have minimal opportunities to demonstrate their innocence. In recent years, the Minister of Justice, the former prosecutor for terrorism, Fujimori himself, and many lawmakers have proposed the creation of special mechanisms such as a review commission to remedy defects in the trials, at least in those cases where there are compelling reasons to believe in the defendant's innocence. Yet nothing has been done to establish any such mechanism. In the meantime, faceless military and civilian courts, conducting secret trials behind prison walls, continue to sentence Peruvians to decades of imprisonment in life-threatening conditions without offering them the basic judicial process guarantees required by international human rights law.

Extrajudicial executions and disappearances by Peru's military and police have been dramatically reduced in the past three years, demonstrating the effectiveness of international pressure over a government which was officially engaging in these atrocities. This is a welcome development, even if the arbitrary deprivation of life by the authorities has simply been supplanted by the arbitrary denial of liberty. Nonetheless, violent state-sponsored abuse continues as police regularly engage in torture as an interrogation tool; a practice which is facilitated by lengthy periods of police detention allowed under anti-terrorism procedures and by routine acceptance of coerced confessions as evidence in the faceless courts.

Torture is not only practiced in cases involving terrorism. This was vividly brought home by the death in custody of student Jhoel Huamán García in Cerro de Pasco on May 26, 1995, and of engineer Mario Jesús Palomino García, in Breña, Lima, on March 22, 1996. Both were arrested arbitrarily in the street by police, taken to police stations, and reportedly beaten to death. In both cases, relatives of the victims and human rights groups have been physically attacked and received death threats after pressing for criminal investigations. On February 18, 1996, three masked men broke into the home of Dr. Edith Luquillas González, a member of the Committee for the Defense of Human Rights in Pasco working on the Huamán case, and threatened her sisters who were alone in the house at the time. Shortly before the attack, one of the officers accused of Huamán's murder had been released from prison. Enrique Palomino, a brother of Mario Palomino, had his home shot up in March 1996; and on April 11 men with military-style haircuts tried unsuccessfully to break in.

Although the inflicting of physical abuse is outlawed in Peru, torture—the intentional infliction of severe pain by a government agent or with that agent's acquiescence—is not specifically penalized, as required by the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment, which Peru has ratified. The scandal caused by these recent torture deaths led to several parliamentary proposals for a law specifically criminalizing torture. On April 11, 1996, Popular Christian Party congressman Antero Flores Aráoz introduced a bill which provides a minimum twenty-year sentence for those responsible for causing death by torture. The bill had not passed committee stage at the time of writing.

Meanwhile, the violence and terrorist tactics employed by armed opposition groups in Peru—predominantly by the now-divided Shining Path—continue to rob Peruvians of their most fundamental human right: the right to life. According to the National Coordinating Committee for Human Rights (*Coordinadora Nacional de Derechos Humanos, hereinafter the Coordinadora*), a respected umbrella group of non-governmental human rights organizations, Shining Path was responsible for 222 selective assassinations in 1995, considerably more than the 173 cases documented in 1994. These violations of basic international humanitarian standards far outnumber those committed by the Peruvian military and police. Whatever effect the human rights movement has had in improving the climate of respect for human rights in Peru in the last few years, none of it has influenced the behavior of the Shining Path. The calculated cruelty

which has characterized the Shining Path's ideology and strategy throughout the conflict is deeply repugnant and in direct contradiction to international humanitarian law.

President Fujimori set up the faceless courts shortly after closing the Congress and placing the judiciary under executive control on April 5, 1992. Although many steps have been taken in the intervening years to restore some aspects of a balance of power, Peru's democratic institutions are far weaker today than four years ago. Of particular concern is the continued failure to assure the basic independence of the judiciary. Outside of Lima, all of Peru's judges and prosecutors continue to serve on a provisional basis, subject to the whims of the executive. Recent steps to reorganize the judiciary further undermine its independence. The only bright spots in the recovery of democratic institutions in the last year have been the long delayed appointment of the Defensor del Pueblo, or Human Rights Ombudsman and the reactivation, after a suspension of more than three years, of the Court of Constitutional Guarantees (*Tribunal de Garantías Constitucionales*), the ultimate arbiter of constitutional disputes. Human Rights Watch/Americas believes the Human Rights Ombudsman can play a crucial role in helping to generate a new climate of respect for human rights in Peru, although his power to do so has been restricted by a limited budget and authority.

As President Fujimori initiates the second year of his second term in office, we urge him to commit his government to redress the injustice he himself has acknowledged. Two steps are vital to bring to an end the extraordinary anti-terrorism measures which he had always vowed would be temporary. Fujimori should align his government behind a reform of anti-terrorist legislation to restore full due process rights and to establish an independent commission to redress the wrongs visited on defendants by the faceless courts. In addition, President Fujimori should demonstrate a commitment to allowing the reestablishment of a judicial power which will act as a check on political power.

Several government spokespersons have announced to the international community that the process of reviewing terrorism and treason cases is already underway, although there is no evidence that any action has been taken. The *note verbale* presented by the Permanent Mission of Peru to the United Nations office in Geneva on August 12, 1994, during the 46th Session of the U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, stated that Peru's Congress had already passed a law submitted by the executive creating a commission to review cases. This was false: almost two years later Congress still has not passed any such law.

In a similar vein, Justice Minister Carlos Hermoza Moya stated, in his address to the President of the United Nations Commission of Human Rights, at its 52nd Period of Sessions in Geneva (March 18-April 26, 1996), that "...[t]he government is reviewing those trials of citizens in which there may have been errors in the appreciation of the crimes of which they were accused or in the evidence presented. All because pacification requires a propitious climate for a true national reconciliation."

More recently, in an interview in Washington, D.C. in May this year, President Fujimori said, "We recognize that such a situation exists and we are doing all we can. We would like to have a mechanism soon to allow us to bring justice to those who are unjustly in detention. We don't doubt that such people exist..."

Such statements appear to be geared for external consumption, where criticism of the faceless court system has been persistent. Meanwhile, the faceless courts which gave rise to the injustices in the first place continue to function, despite government promises last year to return terrorist cases to ordinary courts. Inevitably, the faceless courts will generate more cases. Unless action is taken soon, the numbers of innocents imprisoned will continue to grow, and they are already scandalously high.

According to a 1994 census conducted by Peru's National Penitentiary Institute (INPE), 5,003 individuals are currently in prison either charged or convicted of treason or terrorism (the two categories under which politically-motivated crimes are catalogued), just under one quarter of the total prison population. Sixty-six percent of these prisoners are officially described as belonging to the Communist Party of Peru - Shining Path (*Sendero Luminoso*), and ten percent to the much smaller Túpac Amaru Revolutionary Movement (*Movimiento Revolucionario Túpac Amaru*,

MRTA). The remaining twenty-four percent are described as having “undetermined” affiliation, which evidently means that they belong to neither of the above groups. Within prison walls, authorities carefully segregate those prisoners considered to be without affiliation from those of known militancy. It is reasonable to assume that the category defined in the statistics as “undetermined” corresponds roughly with the number of prisoners who are innocent or who collaborated with the guerrillas against their will. The Coordinadora is assisting with the legal defense of 607 prisoners they consider to be innocent. However, they are convinced that there are many cases of possibly innocent detainees for which they have no information. Allowing for human error in assessing probable innocence and for undetected cases, the number of innocent prisoners could scarcely be less than 500, and it may be considerably higher.

Section IV of this report is devoted to an account of the arrest and trials of sixteen prisoners who appear to have been unjustly convicted. We have selected the cases to illustrate different due process violations associated with the counter-terrorist trials. Procedures in both the secret military tribunals which try cases of treason (*traición a la patria*), and the civilian faceless courts which try terrorism cases violate elementary international due process obligations. We have analyzed these violations in detail in earlier reports. The cases described here include people tortured into incriminating themselves while held incommunicado, or falsely incriminated by others who were themselves tortured or coerced, or who volunteered false information maliciously or thoughtlessly. All of these defendants were prevented by law from questioning their accusers. Often they were simply the victims of verdicts reached without a careful consideration of the evidence presented, or where there had been no effort made to confirm unsubstantiated allegations.

We are disturbed by the view commonly expressed by government officials that due process restrictions are a necessary price to pay to deal effectively with terrorism. Some variant of this argument, that it is impossible to make an omelette without breaking eggs, is used by governments of every hue to justify human rights violations. Certainly governments are obliged to protect citizens against arbitrary violence. But it is self-defeating, as well as immoral, to arbitrarily deprive innocent citizens of their liberty as a collateral cost of achieving that aim. Moreover, even those who participated in heinous crimes are entitled to due process under international human rights treaties ratified by Peru.

The human stories which lie behind the cases documented in this report are tragic and compelling: the odyssey of relatives through the cold and unfamiliar world of the courts; the search for money to pay a lawyer often reluctant to take on a case which carries with it a powerful stigma in today's Peru; the lawyers who prove corrupt or incapable; the race against time to track down witnesses and collect testimonies; the abandoned wives, husbands, and children; the broken careers, reputations, and friendships; the draconian prison regimen which must be endured for years even by those who are eventually acquitted; and above all, the wounding experience of being treated arbitrarily like a criminal and an enemy.

Recommendations

Human Rights Watch/Americas makes the following recommendations to the government of Peru:

- The government should establish an independent judicial review board to examine the sentences of all persons currently imprisoned under DL 25475 (the terrorism law) and DL 25659 (the treason law), giving priority to cases where there are strong indications of innocence, including those cases documented in this report.
- The judicial review board should establish criteria for the evaluation of evidence and reject verdicts based on testimony by repented guerrillas or other witnesses which has not been independently corroborated during the trial. All evidence gathered by torture should be dismissed.
- The board should be empowered to recommend the reduction of penalties which are disproportionate in relation to the gravity of the offense as well as to reverse the convictions of those imprisoned without credible evidence against them.

- Immediate steps must be taken to end the use of torture. Peru's criminal code should be reformed to specifically criminalize torture and assign stiff penalties. Those who engage in torture should be prosecuted and punished. Judges should be prevented by law from accepting as evidence statements made under torture.
- The government should end military jurisdiction over civilians, reform the anti-terrorist law, and ensure that the principle of judicial accountability is respected by abolishing the faceless courts, and ensuring that terrorism trials are public. Until that objective is accomplished, the government should take the following measures as a matter of urgency:
 - restore the power of the examining judge to order the release of the suspect when the judge is convinced that there are no grounds for prosecution, without it being necessary for the defendant to remain in prison until the decision has been ratified by the full court;
 - in cases which will proceed to trial, restore the capacity of the judge to determine whether detainees should be remanded in custody or be allowed to attend their trial at liberty, as provided for in the International Covenant on Civil and Political Rights (Article 9[3]) and the American Convention on Human Rights (Article 7[5]);
 - release immediately persons declared innocent by a military judge, or on appeal by the Consejo de Guerra. To keep them incarcerated until the verdict is confirmed by the Supreme Council of Military Justice constitutes arbitrary imprisonment;
 - ensure that judges, rather than police, determine the circumstances in which detainees are held incommunicado. Judges must strictly supervise incommunicado detention to prevent ill-treatment and should impose incommunicado detention only when strictly necessary to protect the investigation;
 - ensure that individuals prosecuted for serious offenses like terrorism and treason be tried by qualified and competent judges, with appropriate training and experience in criminal law;
 - allow defense lawyers the right to cross-examine prosecution witnesses. Testimonies which have not been subject to cross-examination should be inadmissible, and police or army witnesses should be required to attend court for questioning by the judge if the defense requests it;
 - end the humiliating, intimidating, and senseless practice of making defense lawyers wear hoods before and during trials in military courts.
- Prisoners who were unjustly convicted and imprisoned for treason or terrorism should be compensated.
- All prisoners, irrespective of the gravity of their offense, should be allowed to receive weekly visits from their families.

Human Rights Watch/Americas calls on the Shining Path and MRTA to halt immediately all actions which violate Common Article 3 to the four 1949 Geneva Conventions and other norms of international humanitarian law. Political assassinations, outrages against the personal dignity of captives, indiscriminate attacks on civilians, and hostage-taking are strictly prohibited by the laws of war and should halt immediately. The Shining Path, which has heretofore rejected the very notion of individual rights, should make a public declaration of its determination to adhere to the standards of international humanitarian law, and specifically renounce the use of violence against civilians under all circumstances.

The Clinton Administration should redouble its pressure on the Fujimori government to end the use of faceless courts in Peru, to restore the independence of the judiciary, and to review the cases of all those tried by faceless courts,

giving urgent priority to those deemed innocent by local human rights organizations. To that end, the U.S. government should:

- oppose the pending loan at the World Bank for the judiciary and use its influence with other governments to block the loan. World Bank or other international assistance to Peru's judiciary should be conditioned on a restoration of the independence of the judiciary and an end to practices which blatantly violate due process norms;
- sponsor a resolution at the upcoming meeting in Geneva of the U.N. Subcommission for the Prevention of Discrimination and Protection of Minorities to condemn the due process violations associated with the faceless courts and the denial of justice represented by the 1995 amnesty law;
- support the naming of an independent expert by the United Nations Human Rights Commission when it meets in Geneva during the first quarter of 1997. The expert's mandate should include monitoring and publicly reporting on Peru's human rights situation.

II. BACKGROUND

Since the enactment of Peru's anti-terrorist law (Decree Law 25475) and treason law (Decree Law 25659) in June and August 1992 respectively, Peruvian special courts have sentenced and imprisoned thousands of people for offenses related to terrorism.¹

The laws were introduced at a moment of national trauma because of escalating terrorist violence, especially around Lima, where one third of the population lives. The justice system had failed notably to confront terrorism effectively. President Alberto Fujimori's coup of April 5, 1992, by which he dissolved Congress, purged the courts, and curbed the press, opened the way for the introduction of tough anti-terrorist measures with a minimum of opposition.²

Since that date, some (but not all) of the basic institutions of Peruvian democracy, such as the Congress, have been restored. In presidential elections held on April 9, 1995, President Fujimori was re-elected peacefully with a comfortable margin. Terrorist violence, although by no means eliminated, has declined sufficiently for many Peruvians to refer to the past as the "bad days" and think of the future with a degree of optimism unthinkable five years ago. Violent human rights violations by state agents declined significantly in 1994 and 1995, compared with previous years. While to some extent this lower level of human rights abuse may be attributable to a reduced insurgent threat, it undoubtedly reflects as well a shift in tactics by the authorities, whereby prolonged arbitrary detention under the faceless courts has taken the place once occupied by disappearances as a way of eliminating political enemies.

This notable reduction in the level of political violence in Peru has been accompanied by an increase in human rights violations in the administration of justice. While hundreds of Peruvians are unjustly imprisoned by the faceless courts, victims of egregious human rights violations, such as torture, arbitrary execution, and disappearance by government forces have had to sacrifice any hope of obtaining justice through the courts because of an amnesty law enacted in June 1995. The law, which prevents the courts from investigating human rights violations committed by police or military forces during the war against the terrorist groups, also freed the handful of soldiers who had been

¹ See Americas Watch, *Human Rights in Peru One Year after Fujimori's Coup*, (New York: Human Rights Watch, 1993); and Human Rights Watch/Americas, "Peru: The Two Faces of Justice," *A Human Rights Watch Short Report*, Vol. 7, No. 9.

² Americas Watch, in a report covering this period, wrote: "Perhaps the most profound change in the human rights landscape in Peru since last April 5 has been the transformation of a corrupt and ineffective judiciary into a highly politicized weapon of the executive branch deployed not only against suspected members of the armed opposition, but also against the unarmed opposition and various sectors of civil society." Americas Watch, *Human Rights in Peru One Year After Fujimori's Coup*, p. 19.

convicted, including members of a government death squad responsible for a string of political murders and disappearances.

Moreover, while extrajudicial executions and disappearances have been greatly reduced, other violent human rights abuses, such as rape and torture, may have actually increased with the introduction of lengthy police detention periods under the faceless courts.

The terrorist laws decreed in 1992 established that persons accused of crimes of political violence, whether defined as terrorism or treason, would be tried by secret or faceless prosecutors and judges—terrorism in faceless civilian courts and treason in secret military tribunals. The decrees also extended permissible periods of police detention, severely restricted the right to defense, and established a new punitive prison regime for terrorism and treason convicts.

In an earlier report on the courts, we concluded:

Since 1992 faceless courts have amassed a breath-taking record of human rights violations. To enumerate the particulars is to descend into a citizen's nightmare, where no rule is inviolable, no right guaranteed, no precedent honored. In Peru, the arbitrary permeates every stage of the judicial process: from arrest to charge, investigation, trial, sentencing and appeal.³

³ Human Rights Watch/Americas. "The Two Faces of Justice." pp. 7-8.

The arbitrariness of the courts and their systematic violations of elementary rights of defense and due process have been criticized by several United Nations human rights bodies, as well as the Inter-American Commission on Human Rights.⁴ The non-governmental international human rights community has been equally unanimous in condemning them.⁵

⁴ The United Nations Human Rights Committee, during its forty-third, forty-fourth and forty-fifth sessions in 1992 considered the periodic report sent by Peru to the Committee pursuant to its obligations as a signatory of the International Covenant on Civil and Political Rights, Article 40(1). The Human Rights Committee indicated, following discussions with the Peruvian representative, that the legal and judicial system was in a state of “disarray” due to the suspension of several parts of the Constitution. The committee also noted due process violations including the de facto suspension of habeas corpus and *amparo* rights and retroactive application of new legislation drawn up for specific cases. Moreover, the committee stated that its concerns had not been adequately addressed in the oral presentations or in an addendum to the report submitted by Peru. (United Nations, *Report of the Human Rights Committee: General Assembly Official Records, Forty-Seventh Session, Supplement No. 40(A/47/40)* [New York: United Nations, 1994], pp. 7, 80, 82, 84)

In 1994 and 1996 the U.N. special rapporteur on torture produced special reports on Peru. In 1994, the special rapporteur noted that the anti-terrorist decrees establishing the court system “facilitated” the use of torture. (United Nations, Economic and Social Committee, Commission on Human Rights, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, In Particular: Torture or Other Cruel or Degrading Treatment or Punishment, Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission of Human Rights resolution 1992/32, E/CN.4/1994/31, p. 90, para. 427).*

In 1996, the special rapporteur reiterated this concern, concluding that the government had failed to address the issue. (United Nations, Economic and Social Committee, Commission on Human Rights, *Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment, in Particular: Torture or Other Cruel or Degrading Treatment or Punishment, Report of the Special Rapporteur, Mr. Nigel Rodley, submitted pursuant to Commission of Human Rights resolution 1995/37, E/CN.4/1996/35, p. 28)*

Peru's courts also became the subject of a report by the special rapporteur on independence of the judiciary, which found that the wholesale dismissal of judges following the 1992 coup compromised judicial independence. (United Nations, Economic and Social Council, Commission on Human Rights, *The Independence and Impartiality of the Judiciary, Jurors and Assessors and the Independence of Lawyers: Report on the Independence of the Judiciary and the Protection of Practicing Lawyers, prepared by Mr. Louis Joinet pursuant to resolution 1991/35 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities E/CN.4/Sub. 2/1992/25, p. 26, para. 132, 135)*

The Inter-American Commission on Human Rights published a special report on Peru after the 1992 coup as well. The commission decried as “[p]articularly disturbing” the new system of “secret justice” in which the impartiality and independence of judges could not be determined. Along with the suspension of habeas corpus and the summary dismissal of judges, the commission concluded that “this process is creating the institutional and legal conditions to justify arbitrary rule.” (Organization of American States, *Report on the Situation of Human Rights in Peru*, [Washington, D.C.: General Secretariat of the Organization of American States, 1993], pp. 19, 24)

In its 1992-1993 annual report, the commission detailed violations of the right to defense before the faceless courts, including the case of Miguel Fernando Ruiz-Conejo Marquez, in which the court did not notify his attorney in Lima of his trial in Puno until two days after sentencing the defendant to life imprisonment. The commission also reported the case of two defense attorneys who, having represented several Shining Path members, were themselves charged with collaborating with terrorists and summarily convicted and sentenced to thirty years of imprisonment. (Organization of American States, *Annual Report of the Inter-American Commission on Human Rights, 1992-1993* [Washington, D.C.: General Secretariat of the Organization of American States, 1993] p. 200)

In its 1993 annual report, the commission stated that “the lack of an independent judiciary is one of the main reasons for the decline of the enjoyment and exercise of human rights in Peru.” (Organization of American States, *Annual Report of the Inter-American Commission on Human Rights, 1993*, [Washington, D.C.: General Secretariat of the Organization of American States, 1994] p. 506-507)

No one can state precisely how many innocent prisoners there are. In 1996 the Coordinadora reported that it had given legal assistance to a total of 1,390 unjustly accused persons since 1992, of whom 607 remained in prison as of December 1995 and twenty-three were still wanted for arrest. The Coordinadora stressed that the figure was incomplete and only reflected the cases which were brought to it.⁶

In November 1995, seven human rights organizations, as well as church groups and independent lawyers, jointly published a volume entitled *The Innocents Have Names*, which gave details of 300 cases they were defending.⁷ This number is no more than a selection of the cases known to these organizations and individuals, and the preface to the book points out that the total number could be much higher, given that the majority of those affected come from the poorest sectors of Peruvian society without ready access to human rights organizations or church groups, and live in remote and inaccessible rural areas. In recent months the Coordinadora has spoken of upwards of 700 cases. In the early years of the terrorist law, the authors comment, talking of innocent terrorist prisoners would have been to invite instant accusation of being in sympathy with the subversives. However, that perception has changed. Television, radio, and print media have carried compelling stories of the traumatic personal consequences of faulty judicial decisions. Both the Catholic and Evangelical churches have devoted programs of assistance to innocent prisoners.

A. Reforms in 1995-1996

The government, too, is at least aware that injustices have been committed, even though it has lacked the political will to remedy the situation. President Fujimori recently acknowledged the plight of innocents convicted of terrorism in an interview with the National Broadcasting Corporation (NBC) during a visit to Washington on May 22, 1996. Fujimori was asked by NBC:

The human rights organization Human Rights Watch, which is an independent organization, finds that since the inception of your government in Peru, there has been a clear reduction of cases of forced disappearance of civilians, but, nonetheless, due to the faceless court system, there are about four hundred innocent civilians in detention.

To which President Fujimori replied:

The most thorough examination of the faceless courts in relation to Peru's international human rights obligations to date has been the report of the Commission of International Jurists, published in 1994. Established by the Clinton Administration in 1993 as a result of an agreement with the Fujimori government, the jurists commission recommended ending the use of faceless courts and military trials of civilians. (*Report of the Commission of International Jurists on the Administration of Justice in Peru* [Washington: Internet, March 31, 1994], p. 52)

⁵ In its recent report on Peru, Amnesty International stated that anti-terrorist laws creating faceless courts "fall short of international fair trial standards and facilitate the imprisonment of prisoners of conscience. The organization also believes that the anti-terrorism laws deny the right to a fair trial of all those detained and put on trial for terrorism-related crimes." (Amnesty International, *Peru: Prisoners of Conscience*, [AI Index AMR 46/09/96], May 16, 1996. p.6)

⁶ Coordinadora Nacional de Derechos Humanos, *Informe sobre la Situación de los Derechos Humanos en el Perú en 1995*, (Lima: Coordinadora Nacional de Derechos Humanos, 1996) p. 30.

⁷ APRODEH et al, *Los Inocentes Tienen Nombre: 300 Historias de Prisión Injusta en el Perú*, (Lima: Grafimace S.A., 1995).

The Repentance Law system was misapplied by civilian and military judges and prosecutors in some cases in which these unjust detentions took place. We are following up on this matter. We recognize that such a situation exists and we are doing all we can. We would like to have a mechanism soon to allow us to bring justice to those who are unjustly in detention. We don't doubt that such people exist. In any fight against terrorism this type of situation can take place. Don't forget that we have withstood twenty-three years of terrorism, with car bombs like the one in Oklahoma taking place, on average, once a week.⁸

This statement contrasts with previous statements of government officials: "Unfortunately, unfair arrests and irregularities...have occurred," acknowledged then-Special Prosecutor for Terrorism Cases Daniel Espichan in September 1994, "but one can't cry over spilled milk."⁹ This slightly more flexible stance on the president's part is no doubt the product of years of dogged work by Peruvian and international human rights organizations, both of which have developed a concerted campaign for justice for the victims of the faceless courts.

The newly elected Defensor del Pueblo, Jorge Santistevan, expressed concern about the innocent prisoners in a recent interview shortly after assuming his position:

I would say that there are at this moment, in my mind, three ways in which we could address (this problem). First, we could look for a way, within the (existing) procedures, that a norm could be found to create some mechanism of revision, because we cannot ignore that the trials that have taken place and are still taking place, have been under exceptional circumstances. In the second place, and overlapping partly with the first, the various legislative proposals which have been made must be analyzed to see how we could push them forward, or arrive at a novel proposal. In the third place, we could search for a formula, which with great diplomacy and discretion, could form the basis for some kind of pardon, which, although it solves only part of the problem, could at least restore liberty to people who have lost it without justification.¹⁰

In response to domestic and international outcry about the injustices inherent in the faceless court procedures, the government during 1995 amended several aspects of the anti-terrorist law which had attracted particular criticism. These steps included the following:

- January 6, 1995: Supreme Decree 01-95-JUS prohibited the police from presenting detainees charged with terrorist offenses to the news media, although the police were allowed to continue this practice in the case of detainees charged with treason. The practice of presenting detainees to the press wearing black-and-white-striped prison garb violates the presumption of innocence.
- April 21: Law 26447 restored the right of access to a lawyer from the moment of detention and also mandated the presence of the public prosecutor during the police interrogation.¹¹

⁸ NBC official transcript.

⁹ Human Rights Watch, *World Report 1995* (New York: Human Rights Watch, 1994), p. 117.

¹⁰ Jorge Santistevan; "El problema de los inocentes me empieza a quitar el sueño," *Ideele*, No. 86, May 1996, pp.16-18.

¹¹ "The [public prosecutor's] function is to monitor police activity and ensure that the procedures indicated in the law for the conduct of the prosecution are conducted correctly: in this respect, [the prosecutor] must direct the preliminary investigation in relation to the evidence appropriate to pursue, and control the permanent risk of police abuses or excesses, safeguarding the basic rights recognized in the Constitution and international human rights law." Ronald Gamarra, *Terrorismo: Tratamiento Jurídico* (Lima: Instituto de Defensa Legal, 1996), p. 203. (Human Rights Watch/Americas translation)

This law also raised the age at which juveniles could be charged as adults in terrorism cases from fifteen years to eighteen, bringing it into line once more with the norm regulating ordinary criminal offenses. As a result numerous cases of minors facing prosecution by faceless courts were transferred to juvenile magistrates, and out of the penitentiary system to juvenile detention centers.¹²

Law 26447 also provided for the termination of the faceless civilian court system from October 15, 1995, without eliminating the military faceless courts. As this deadline approached, however, there was a flurry of parliamentary activity on the government benches to get it postponed. At the last moment, on October 13, 1995, a bill was passed extending the faceless courts until October 16, 1996.

- July 21, 1996: Law 26508 established that beneficiaries of the Repentance Law who committed terrorist crimes after benefitting from the law would be tried for treason by military courts, and if found guilty given life imprisonment.¹³
- March 28, 1996: Congress passed legislation whereby prisoners acquitted and freed by military or civil courts, whose cases had been reopened following the reversal of the acquittal by the Supreme Court, would not be liable to re-arrest but might stand trial by summons. During 1995 the Supreme Court ordered retrials of hundreds of prisoners who had been acquitted by lower courts, following judicial reviews mandated by the anti-terrorist law. In the great majority of cases the new hearings were ordered to correct purely formal or technical flaws in the original trials, such as the failure to record the code number of the magistrates at the beginning of the sessions.¹⁴ Many former prisoners were re-arrested in 1995, pending new trials.

B. Continuing Due Process Limitations

Most of the reforms described above are welcome, if long overdue, improvements. However, they have not affected the basic due process shortcomings of the faceless court system. Features of this system which remain unaffected and which contribute to unjust prosecutions and convictions, include:

- *the vague definition of terrorism and the disproportionate penalties assigned.* The anti-terrorism law gives imprecise catch-all definitions of terrorism and violates freedom of expression by criminalizing acts such as “provoking anxiety,” “affecting international relations,” or seeming to excuse the behavior of terrorists (*apologia del terrorismo*). Both the terrorism laws and the treason law violate the principle that the punishment

¹² According to the Coordinadora, 209 minors had been detained in ordinary jails and maximum security prisons for terrorism and treason as of April 1995. Approximately fifty of these cases remain to be turned over to the juvenile system due in part to the difficulty of locating birth certificates as evidence. (Coordinadora Nacional de Derechos Humanos, *Informe 1995*, pp. 35-36)

¹³ Decree Law 25499, known as the Repentance Law, was implemented in May 1992 and remained in force for thirty months. Hundreds of people were arrested on the testimony of individuals who had surrendered under its aegis, called *arrepentidos* (repentants). Those who surrendered and provided names of guerrillas received reduced or suspended sentences—unless the arrepentido had been a leader. Although this law undoubtedly multiplied the number of arrests, from the perspective of due process it has been a disaster. Many prisoners whose cases Human Rights Watch/Americas has studied were convicted after being identified by arrepentidos. Such identifications were often vague, lacking in verifiable details, and based on hearsay or third party accounts. Often they were the only evidence against the defendant. Although the arrepentidos frequently retracted their statements later alleging they were made under torture, judges routinely ignore these retractions. Furthermore, they commonly fail to weigh defense evidence, such as alibis. Almost invariably the accusation has been given more weight than the defendant's protestations of innocence. Since the defense could not know the identify of the arrepentido or question him or her directly, or even read his or her testimony in some cases, this law produced many injustices. Although the Repentance Law has been repealed, many prisoners continue to serve sentences which were imposed under these unjust circumstances, underlining the urgency of a prompt judicial review of these cases.

¹⁴ Under the faceless court system the identity of the judge or prosecutor is indicated on legal documents with a numerical code. The failure to record the code has little conceivable bearing on the outcome of the trial, since the identity of the judge is secret anyway.

should fit the crime. Under the treason law, for instance, a teacher who espoused the ideals of the Shining Path and a terrorist who had killed dozens with a car-bomb could receive the same sentence: life imprisonment.

- *excessive concentration of powers in the hands of police.* The police continue to enjoy excessive powers in the early period of detention in terrorism and treason cases. In terrorist cases the normal period of twenty-four hours for which the police may hold a suspect before presenting him or her to a judge is extended to fifteen days.¹⁵ Although in theory the presence of the prosecutor and defense attorney during police interrogations should safeguard against coercion, intimidation, and torture, in practice such safeguards are more formal than real. In several cases documented in this report prosecutors did not attend police interrogations or searches and simply appended their signatures at the base of the declaration, or allowed the police to do it for them. Records of police interrogations rarely show any interventions by defense attorneys on behalf of their clients.

The maximum period allowed for incommunicado detention in terrorism cases is the same as in ordinary criminal cases: ten calendar days (Code of Penal Procedure, Article 133). Incommunicado detention may not prevent access to the prisoner by the prosecutor, the judge, and the defense attorney (Law 26447). However, unlike in ordinary criminal cases, Law 25475 gives the police power to impose incommunicado detention unilaterally, without consulting the judge, although the police are required to inform the representative of the Public Ministry and the judge about the measure.¹⁶ The high incidence of torture and other ill-treatment during incommunicado detention in terrorism and treason cases makes clear that the judges are not exercising adequate supervision. Absent effective judicial oversight, incommunicado detention is an invitation to police abuse. Moreover, incommunicado detention should not be the rule, but rather should be imposed only following a reasoned determination by the judge to protect the integrity of the investigation.

Police can determine whether evidence is sufficient to charge, what charge to make and whether the defendant will be tried by a civilian or a military court. Police evidence in virtually every case we have studied has been acquired from interrogations often uncorroborated by any material evidence.

¹⁵ In treason cases, this period can be extended another fifteen days up to a maximum of thirty days with permission from the military judge. (Decree Law 25744, Article 2[a])

¹⁶ Gamarra, *Terrorismo*, p. 225.

- *The right of defense in faceless court proceedings is severely restricted by lack of adequate access to court files and timely information on sentences and the progress of cases; excessively rapid hearings in which the defense has no time to prepare; inadequate time and improper conditions for interviewing clients in prison; the prohibition of questioning in court of members of the police or army, the failure of courts to adequately cross-examine witnesses for the prosecution, including arrepentidos, and the prohibition on defense lawyers conducting independent cross-examinations of these witnesses.*¹⁷ In past years, lawyers have themselves been intimidated, harassed or accused of being guerrilla sympathizers. Defense difficulties are examined in further detail in Section III.
- *Many of the faceless judges appear to lack experience in assessing evidence in a criminal procedure.* Judges for the faceless civilian courts are drawn from all branches of the judicial service, including courts specializing in land disputes, civil cases, and agrarian law. Judges' lack of qualifications are evident in a tendency to rely entirely on the results of the police investigation without further inquiry. Faceless courts are also notoriously subject to pressure from the executive. Lawyers interviewed by Human Rights Watch/Americas in April commented that following a statement widely reported in the press by a slum community leader claiming that released terrorists were active in his neighborhood, instructions were sent to the courts to tighten up their verdicts and that this was reflected in a dramatic increase in convictions.
- *The most severe restrictions on due process occur in military courts,* which under the treason law are given jurisdiction over terrorist crimes considered so serious as to constitute treason. Not only are the judges active-duty officers dependent on their superior command and empowered to sit in judgment over their battlefield enemy, proceedings are summary (a verdict must be passed within ten days of a formal charge), meaning that many verdicts are based on the findings of police reports, without any further investigation.
- *Secrecy is the rule in faceless court proceedings.* In both civilian and military proceedings, judges and prosecutors are identified by codes. Supreme Court judges also identify themselves by secret codes when handling treason cases. Hearings take place in specially equipped courtrooms inside the high security prisons (or military bases in treason cases). They are small rooms with a single door and a large one-way mirror along one wall. In an adjoining room on the other side of the mirror sit the judges, prosecutor, and court secretaries. They communicate with the defendants and their counsel on the other side of the mirror through voice-distorting microphones. In the military proceedings the judges and court officials (and sometimes the defense counsel as well) are hooded. Only the defendant and the attorney are admitted to the trial.

¹⁷ In the case of Alfredo Pablo Carrillo Antayhua, a 17-year-old sentenced to life imprisonment for treason by an air force court, The United Nations Working Group on Arbitrary Detentions found the Peruvian government responsible for his arbitrary detention. Among the grounds given were “[s]erious infractions of international norms regarding the right to an impartial trial, which confer on the detention an arbitrary character, according to Category III of the principles applicable for the examination of cases submitted at the Working Group.”

The specific violations of due process mentioned by the Working Group included failure to ensure the presence of a lawyer during the investigation, and the fact that the detainee “.... [d]id not have an opportunity to cross-examine the prosecution witness who incriminated him in the homicide of a police official. In fact, the [witness] ... only made a statement in the police station and not before the judge. The defense's petition, during the trial stage, for the witness to be summoned was never granted, and, in fact, he never appeared.”

Decision No 13/1995 (Peru), published in United Nations Economic and Social Council, Commission on Human Rights, Fifty-Second Session, Decisions Adopted by the Working Group on Arbitrary Detention, E/CN.4/1996/40/Add.1, 31 October, 1995. Original in Spanish, HRW/Americas translation (official English version unavailable).

All these measures, which are ostensibly designed to protect the security of judges and court personnel, erode the public accountability of judges dealing with terrorism cases. Incompetent or corrupt judges cannot be identified and sanctioned, nor can the efforts of good ones be publicly recognized. Public debate about the grounds for prosecutions, convictions or acquittals is impossible. Undoubtedly secrecy measures are largely responsible for the public's ignorance of the years of injustices perpetrated in its name, which would not have come to light at all were it not for the courageous efforts of defense attorneys, human rights advocates, and a handful of journalists.

C. Proposals for Judicial Review

As public concern about unjust imprisonment for terrorism has mounted, the case for a mechanism to review convictions has won more converts among politicians on both the government and opposition benches. President Fujimori has himself talked publicly of the creation of a commission to review cases. Yet despite a flurry of draft laws since the proposal was first mooted two years ago, nothing has been done.

Since November 1994 seven legislative proposals have been presented to Congress, two from the government benches, three from members of opposition parties, one from the Ministry of Justice, and one from the vice-president of the congressional Justice Commission.¹⁸ Most of these proposals are premised on the view that numerous people have been unfairly convicted on the basis of false incrimination by repentant terrorists. Although the mechanisms differ, most of the draft laws contemplate the formation of a special commission to select cases, which would be then passed to the Supreme Court for a judicial review or would benefit from an amnesty or presidential pardon. Plans for a review commission announced by the presidents of the Justice Commission and the President of Congress in May 1994 never came to fruition.¹⁹ There has never been an adequate official explanation for these delays.

In April 1996, Luz Salgado Rubianes, the president of the congressional Commission of Human Rights and Pacification, told Human Rights Watch/Americas that the commission was already engaged in reviewing cases. According to statistics she showed us, the commission had reviewed 148 cases since August 1995. The commission's work did not, however, consist of a review of unfair convictions, but rather of examining procedural problems, such as complaints from prisoners without defense counsel.²⁰ In an apparent example of political interference with judicial independence, Salgado explained that the congressional commission also "advised" the Supreme Court in cases in which appellants had asked for a *recurso extraordinario de revisión*, a last ditch appeal which may be lodged in exceptional circumstances before the Supreme Court or the Supreme Council of Military Justice.²¹

D. Lack of Judicial Independence

As noted above, the structural independence of the judiciary was ended when President Fujimori seized dictatorial power in April 1992. Massive purges of judges and prosecutors sent an unmistakable message that court officers' careers depended on the executive branch. As some democratic institutions have been slowly restored in Peru,

¹⁸ Amnesty International, "Peru: Prisoners of Conscience." Amnesty International has adopted 122 prisoners of conscience (political prisoners who have neither used nor advocated violence) in Peru. See also "Comisión Revisora," *Ideele*, No. 81, November 1995, pp. 13-14.

¹⁹ Amnesty International, "Peru: Prisoners of Conscience," pp. 8-11.

²⁰ Human Rights Watch/Americas interview with Luz Salgado Rubianes, Lima, April 16, 1996.

²¹ The review mechanism exists both in civilian and military jurisdiction, although the circumstances in which it may be lodged are strictly limited. In civilian courts the defense has to come up with significant new evidence for the appeal to be admissible; in military courts, since a November 1993 reform, the grounds are more flexible: if it can be argued that the trial court failed to give due weight to existing evidence, an appeal may be admitted. The Instituto de Defensa Legal reports that the Supreme Court has not granted a single review petition, although many have been presented; in military courts four appeals have been upheld. Two prisoners, Ada Navin and Clavio Peralta, who had been convicted in the same case, were released; the other two cases were referred to civilian courts. (Letter to Human Rights Watch/Americas from the Instituto de Defensa Legal, July 4, 1996)

the National Magistrates Council (*Consejo Nacional de la Magistratura*) has undertaken the job of reviewing the qualifications of provisional judges and prosecutors throughout the country, in order to determine whether their tenure should be restored. This process has been completed in Lima, but not in the rest of the country.

The process of restoring judicial independence appears to have been dealt a setback on June 16, 1996, when the Congress—in a late night session without prior debate—approved Law 26623, creating a Council of Judicial Coordination (*Consejo de Coordinación Judicial*) to guide judicial reform. Although the law is designed to accomplish much needed reform, its positive impact is marred by the concentration of power during a transition period, to last until December 1998 and possibly to be extended, in the hands of two individuals. One of these individuals, retired Naval commander José Dellepiane, currently serves as the Executive Secretary of the Executive Commission of the Judiciary (*Comisión Ejecutiva del Organismo Judicial*). The second individual will represent the Public Prosecutor's Office. These two individuals will have tremendous powers, including the authority to fire judges and prosecutors, thereby undermining the work of the National Magistrates' Council. The concentration of powers to reorganize the judiciary in two individuals, one of them already known for close ties to the executive branch and the armed forces, is a step away from badly needed judicial independence in Peru. In the wake of the promulgation of the law, jurists Arsenio Oré Guardia and Javier de Belaúnde resigned from the *Academia de la Magistratura*, a new institution created by Peru's 1993 Constitution to professionalize judges, in protest.

III. LIMITATIONS ON THE RIGHT TO DEFENSE

While formal access to defense counsel is guaranteed by law even during police custody, in practice defense is reduced to little more than a formality, particularly in the military courts. Four features of civilian and military faceless courts severely limit the possibility of an effective defense; the summary nature of court investigations and trial proceedings, prohibitions on the questioning of police and the use of secret witnesses, obstacles to access to trial files, and the anonymity of the judges.

A. Summary Investigations

Article 13 of Law 25475 establishes a rigid limit of thirty days extendable to fifty days for the trial investigation, compared with the four months stipulated by the Code of Criminal Procedures for ordinary criminal investigations. The truncated investigation means that defense attorneys have great difficulty collecting evidence, which often involves travel to rural areas to interview their clients or potential witnesses. Time is insufficient for the courts to conduct a proper criminal investigation; terrorist cases typically involve conspiracies in which more than ten defendants may be involved and police investigators have to deal with terrorist groups' strategies to conceal evidence.²² In view of this, it is little surprise that, faced with a choice to give defendants the benefit of the doubt, or convict, the courts more often than not choose to convict.

B. Prohibition of Cross-Examination of State Agents

Article 13 of Law 24575 also prohibits the appearance as witnesses of police or military personnel who participated in the interrogation. This legal prohibition rules out effective questioning of police evidence.²³ This limitation makes it virtually impossible to prove torture or coercion by police in obtaining confessions or incriminating

²² Gamarra, *Terrorismo*, p. 256.

²³ Law 25475 violates two key dispositions of Article 14 of the International Covenant of Civil and Political Rights. Article 14 (3) states that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality...(b) to have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;...(e) to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him." (*The International Bill of Human Rights*, United Nations, Office of Public Information, New York, 1978)

evidence.²⁴ Like those of the judges, the identities of secret witnesses, often individuals claiming to be repentant terrorists, are kept from the defense throughout the trial, and defense counsel is not allowed to see, interview or cross-examine them. Since the legal norms attach greater weight to security and rapid decisions than to fairness, judges do little more in most cases than carry out a perfunctory investigation.

C. Summary Courtroom Procedures

²⁴ The law specifically prohibits cross-examination of police who participated in the interrogation, not those who may have participated in the detention, even though it is more likely that state agents involved in the interrogation phase are those who will engage in acts of torture to extract confessions. (Gamarra, *Terrorismo*, pp.260-261)

The courtroom procedures which apply when the case comes for oral trial before the faceless court also differ from normal procedures. Under ordinary criminal procedure, witnesses, including police and forensic experts, are questioned in court by the trial judges. Under the faceless court system only the defendants and their counsel appear, which makes it virtually impossible for any contradictions or doubtful points in the evidence to be clarified at the trial stage. According to lawyers consulted by Human Rights Watch/Americas, hearings are often rushed through in the space of two hours in assembly-line fashion, the judges handing down a verdict ten minutes after defense counsel has rested its case.²⁵ The lawyers allege that judges are careless in the evaluation of evidence, and sometimes appear not to have even read the case file. Some lawyers believe that judges have drafted their verdict beforehand and do not bother to sift the evidence presented in court at all.²⁶

D. Anonymity of Judges

Since judges are identified only by a code, are at all stages invisible to defendants and their counsel, and trial proceedings are conducted in private, there are no safeguards to ensure accountability for decisions, nor mechanisms by which lawyers can impugn them. This also makes impossible the mechanism of impeachment that guarantees the impartiality of the tribunal. Indeed, as they present their case orally in court, defense attorneys have no way of knowing that the judges are even present, let alone actually listening, since they are hidden behind a mirror. According to an anecdote defense lawyers told Human Rights Watch/Americas, a prison visitor at the prison of Miguel Castro Castro in Lima entered the courtroom by mistake by the judges' entrance and found himself on the judges' side of the one way mirror, from where he watched the defense attorney earnestly pleading in defense of his client. Looking around him he discovered that the seats where the judges should have been sitting were empty.²⁷

E. Military Faceless Courts

Limitations on the right to defense are even more severe in the military faceless courts. The difficulty of access to the trial documentation, which affects lawyers in civilian faceless courts as well, is particularly serious in military courts. Frequently requests to view the file have to be made months in advance. Photocopying is strictly prohibited. Lawyers are frequently given only a day's notice about an important hearing, and often verdicts are passed without them being notified at all.

²⁵ Human Rights Watch/Americas interview, Coordinadora Juridical Committee, April 16, 1996.

²⁶ The Commission of International Jurists, appointed by the Clinton administration to undertake a special study of the administration of justice in the aftermath of Fujimori's coup, concluded that these restrictions make the task of defense attorneys "all but futile and relegates defenders... to playing a largely symbolic role in the trial proceedings," *Report of the Commission of International Jurists on the Administration of Justice in Peru* (Washington: Internet, March 31, 1994), p.33.

²⁷ Human Rights Watch/Americas interview with Coordinadora Juridical Committee, Lima, April 16, 1996.

Security procedures to which lawyers are subjected in the military bases where trials are conducted are humiliating. In the naval base at Callao the lawyers are first identified at the check-in booth, where they have to board a windowless four-seater bus in which they are taken, in pitch darkness for five or ten minutes, to the trial area. The trial is conducted by judges wearing ski-masks. In the Peruvian air force base at Surco, lawyers are also hooded by military personnel, and if they refuse are prohibited entry. They are guided to a waiting vehicle by soldiers, and taken to the trial area. On arrival there they are asked if they need to read a document, in which case the hood is removed. If not, the procedure is carried out with the hood in place. While presenting their defense, lawyers are made to stand facing a large cupboard or bookshelf, to prevent them from seeing the judges. The same hooding procedures are used when the lawyers exit the base.²⁸ The hooding of defense lawyers is gratuitous and conflicts with the requirement of the Organic Law of the Judiciary, (Article 289;8) that defense lawyers be granted the facilities and consideration which their function requires. Since its effects may be to intimidate the defense, hooding lawyers is in blatant violation of due process norms.

While prisoners acquitted by civilian faceless courts normally go free pending appeal, this is not the case with military tribunals. Normally prisoners have to wait until their acquittal has been confirmed by the Supreme Council of Military Justice, a process that can take months. Defense lawyers consulted by Human Rights Watch/Americas state that this practice is not mandated by any existing law. In fact, Article 631 of the Code of Military Justice states that “the referral of the case to the Supreme Council of Military Justice shall not impede the release of the defendant under the vigilance of the authority, if the sentence is absolution.”

From a human rights perspective the continued detention of a person cleared by a court of a criminal offense is also arbitrary. By acquitting the defendant the court has determined that the criminal charges against him or her are unfounded. In the absence of a superceding conviction or other valid reason, the defendant should be released.

In addition to the power to veto releases, the Supreme Council may also convict a person already acquitted in the two lower courts. A norm in the Code of Criminal Procedures, which regulates civilian proceedings, prohibits the Supreme Court from convicting people already found innocent, although it can order a new trial. The military justice code, however, has no such norm, and has convicted defendants repeatedly acquitted by lower courts. One such case is described below.

IV. CASES OF UNJUSTLY CONVICTED PRISONERS

The cases summarized below tell different stories about the realities of anti-terrorist trials in today's Peru. We believe that there are strong indications that these prisoners are innocent of the charges on which they were convicted. Each group of cases illustrates a particular aspect of trial procedures which violate due process. Where possible, we have included information about their lives and activities prior to their arrest.

A. Luis Alfonso Moncada Vigo

Luis Alfonso Moncada Vigo, falsely accused of treason by two repentant Shining Path members, was acquitted by a military faceless court. Although his acquittal was confirmed on appeal, it was inexplicably overturned by the Supreme Council of Military Justice.

A final year law student at the University of San Marcos, Luis Moncada was arrested on October 25, 1994. DINCOTE police charged him with treason,²⁹ solely on the basis of the declarations of two repentant terrorists, and

²⁸ Letter to Human Rights Watch/Americas from the Instituto de Defensa Legal (IDL), April 23, 1996.

²⁹ DINCOTE (Dirección Nacional Contra el Terrorismo) is Peru's anti-terrorism police force, also abbreviated as DIVCOTE or JECOTE outside Lima.

referred his case to the military judge of the Peruvian Air Force. On April 8, 1995, the first instance air force court acquitted Luis Moncada for lack of evidence, pointing out that his identification by the arrepentidos had not been corroborated and was contradicted by numerous other witnesses, and that the search of his home had turned up nothing. However, Luis Moncada was kept in prison pending confirmation of this verdict by the Supreme Council of Military Justice.

In May the Higher War Council, an appellate court of the Peruvian Air Force, confirmed the acquittal. The prosecutor of the Supreme Council of Military Justice, however, ordered the investigation reopened on the grounds that the court had failed to clarify an alias attributed to Moncada. The case went back to the second instance court, which pointed out that the objection was mistaken and repeated its earlier acquittal verdict. Then, in a shock decision of which Moncada's lawyers were not even informed, on January 17, 1996, the Supreme Council of Military Justice inexplicably reversed the decision and sentenced Moncada to twenty years of imprisonment for treason.

Moncada's defense attorney learned of the verdict by reading about it in the press on the following day, and told Human Rights Watch/Americas that he was not officially notified of the sentence until April 12, 1996—some three months later—after insistent requests. In the verdict the Supreme Council of Military Justice found Moncada guilty of robbing the National Bank in El Agustino in December 1993, a charge which even the police had not made against him, and against which, therefore, he had had no opportunity to defend himself.³⁰ Moncada is currently serving his time in the Miguel Castro Castro prison in Lima.

Moncada, twenty-seven, is the youngest of eight siblings, and until the age of sixteen he lived with his father, a farmer from Cajamarca. "At home we were always a family which set big store on personal liberty. During the government of President Velasco, we were practically thrown into the street. They expropriated almost half of our land. It left us with a deep aversion to dictatorial government and arbitrariness," Moncada's brother Gilberto, an economist, told Human Rights Watch/Americas.³¹

At the time of his arrest, Moncada was busy working on his final year voluntary practice in a legal clinic for the poor. To help finance his studies he had been working as an office assistant, and later computer operator, in the office of the statistical magazine *Cuánto*, of which his brother Gilberto was general manager. Another money-making venture had been a fumigation service he launched with a friend. On top of that, as a keen soccer player, Moncada was coaching the children in the tower block where he shared an apartment with his sister.

The family had good reasons to be unsympathetic to terrorism. Gilberto Moncada had lived close to Channel 5 television, the site of frequent bomb attacks in 1990-1991, and on one occasion had had to shut himself in his bathroom to avoid flying bullets. Gilberto Moncada's sister was widowed when her husband, a police officer who had asked for a transfer to Iquitos as a respite from the violence of Lima, was killed in October 1992 in an air force plane crash.

Moncada's problems began with an unexpected knock on his apartment door. At about 8:30 a.m. on August 3, 1994, plainclothes police, mistaking Moncada for a terrorist suspect, lured him from his apartment, abducted him in the street, hooded him and took him to a garage, where they beat him and, after removing his hood, took several mugshots of him against a wall. They interrogated him about the identities of two people he had never seen before, and confronted him with another person whom he did not know and who likewise was unable to identify him. Realizing their mistake, the police then let him go, after warning him not to denounce what had occurred. Moncada, however, paid no attention and made an official complaint about the conduct of the police on the following day.

³⁰ Letter to Human Rights Watch/Americas from the Instituto de Defensa Legal, July 4, 1996.

³¹ Human Rights Watch/Americas interview, Lima, April 12, 1996.

Two months later, the police arrested Moncada again, this time knowing exactly who he was. They asked him why he had denounced his earlier abduction. They escorted him back to his apartment, which they searched, but found nothing incriminating. However, the case against Moncada had already been concocted. Two men who had turned themselves in and applied under the Repentance Law for leniency had signed statements implicating Luis Moncada in the Shining Path, as "compañero Ricardo." One of the arrepentidos claimed that a guerrilla who had passed on to him information about the movements of two people targeted for assassination, claimed to have received the information from compañero Ricardo.³² He also claimed that Moncada participated as a look-out in a 1992 raid on the Continental Bank in La Victoria.

However, during questioning by the judge, both of these witnesses changed their story. The first, who had said he had known compañero Ricardo as Luis Moncada since 1992, now claimed that he knew of his militancy only through third parties. The second now claimed that he had received the assassination intelligence directly from Moncada in his hand-writing, rather than through a third party, as he had maintained originally. Finally, he was unable to remember which bank had been raided, in what part of Lima it was or even in which year the attack had occurred.³³

Although the identity of the two witnesses is a closely guarded secret, several of the other detainees in the case are also San Marcos students. It is very possible that the denunciation of Moncada was an act of revenge by student Shining Path militants.³⁴ For Moncada was known to have taken a firm position against terrorist groups in the university, and describes himself in a statement to the police as a supporter of President Fujimori. Indeed, he had written to the president only a month before his arrest requesting funds to repaint the law clinic and replace its antiquated typewriters.

B. Luis Alberto Cantoral Benavides

In some cases prisoners have been absolved by each level of the military court system only to be handed over to civilian faceless courts to be tried for terrorism based on the same facts. This practice violates the right to not be tried twice for the same offense, protected in Article 8 (4) of the American Convention on Human Rights and in Article 14(7) of the International Covenant On Civil And Political Rights.³⁵

Luis Alberto Cantoral Benavides was acquitted of treason by the Supreme Council of Military Justice, but due to a mix-up was not released. In one of the few verdicts in which the Supreme Council has granted an extraordinary appeal for a review, it confirmed its own acquittal but accepted the military prosecutor's argument that new evidence warranted reopening the case in a civilian faceless court.

DINCOTE arrested Luis Alberto Cantoral Benavides and his twin brother Luis Fernando in their home on February 6, 1993, while searching for another brother, José Antonio, who was wanted for treason. Although no information indicated that the twins were members of the Shining Path, both were charged with treason. In August 1993, the Supreme Council of Military Justice sentenced Luis Fernando to twenty-five years, but absolved Luis Alberto

³² The two reportedly targeted for assassination were a San Marcos University professor, and the former State Prosecutor for Terrorism, Dr. Daniel Espichán.

³³ The arrepentidos appear in the case file under the codes A1A000191 and A2A000199.

³⁴ The prosecutor for the Higher War Council of the Peruvian Air Force, upholding the lower court's acquittal, stated this explicitly: "[...] the arrepentidos knew Moncada as a student activist and that he rejected the presence of the terrorist groups on the campus, which gives grounds to presume why they gave his name as a member of the organization."

³⁵ "An accused person, acquitted by a nonappealable judgment, shall not be subjected to a new trial for the same cause." Human Rights Watch/Americas and CEJIL are currently litigating two cases in which this principle is violated by Peru before the Inter-American system of human rights. The case of María Elena Loayza, who was detained, tortured, raped, tried and acquitted in military court only to be tried again by a civilian faceless courts based on the same evidence, is currently before the Inter-American Court of Human Rights. The Cantoral Benavides case is being studied by the Inter-American Commission on Human Rights for possible submission to the Court.

and ordered him released. However, a faceless navy judge mistakenly ordered Luis Fernando released instead of Luis Alberto, who was kept in prison. Six weeks later, the Supreme Council of Military Justice ordered the case transferred to the civilian courts on the grounds that new evidence had emerged which the military court had not considered.

This “new evidence” consisted of police hand-writing tests done on documents found in the Cantoral home which police accused Luis Alberto of writing. These documents and the handwriting analysis had been in police custody previously, but for unknown reasons, was not presented during the treason trial.³⁶ Cantoral's lawyers impugned the tests, claiming to have shown conclusively that the only document found which was legible enough to permit analysis was not written by Cantoral. On October 10, 1994, a faceless chamber of the Supreme Court sentenced Cantoral to twenty years of imprisonment. The court exceeded its authority by pronouncing on facts, such as the ownership of the documents, which had already been considered by the military court, which had concluded they did not belong to Cantoral. The Supreme Court also mistakenly referred to Luis Alberto as being known by an alias which in fact was attributed throughout the trial not to him, but to his other brother José Antonio. On October 6, 1995, the Supreme Court rejected an appeal and confirmed the sentence.

Human Rights Watch/Americas, jointly with the Center for Justice and International Law (CEJIL) and the Lima-based Fundación Ecuémica para el Desarrollo y la Paz (FEDEPAZ), whose lawyers are representing Cantoral, have submitted the case to the Inter-American Commission on Human Rights, on the grounds that the due process violations in his case violate the American Convention on Human Rights, ratified by Peru.

C. **Donato Alejandro Tolentino Argandoña, Alfonso Rosely Chacón, and Pedro Vega Valle**

These three cases illustrate the pattern of convictions based solely on uncorroborated testimony obtained under torture.

By far the most common type of evidence presented by the police against terrorist suspects are affidavits and “recognitions” by other suspects, often unsupported or contradicted by other evidence and later retracted by those who supposedly volunteered them. Although judges should consider each case on its merits, they almost always believe the police version and are uniformly suspicious of subsequent retractions or corrections by prosecution witnesses, to the point of ignoring them entirely.

In any review of verdicts of the anti-terrorist courts, whether civilian or military, all evidence in the form of denunciations by suspects or terrorist defendants must be carefully scrutinized. Particular attention must be paid to cases in which suspects have been convicted on the basis of testimonies that conflict with established facts, those that are vague or unsubstantiated, or where there are grounds to believe that the suspect or the accuser was ill-treated or coerced into giving the information, or where it was given without the prosecutor or defense attorney being present. The following cases are illustrative.

Teacher and trade unionist **Donato Alejandro Tolentino Argandoña** was convicted by a military tribunal to thirty years of imprisonment for treason on the basis of the testimony of a criminal suspect who later wrote to the military justice authorities withdrawing his allegations and insisting that they were extracted under torture. Eye-witnesses of the crimes of which Tolentino had been accused by this witness failed to give credence to any of the allegations. Neither of these factors was given any weight by the military courts, which have confirmed Tolentino's sentence and refused a petition for reconsideration (*recurso de revisión*).

Tolentino and his wife, Elsa, are both teachers, and for years have worked in a public elementary school in Barranca, a Lima suburb. Tolentino was also well known locally as a teachers' union leader, and from 1987 to 1989 was Secretary General of the Barranca branch of the Primary Education Workers Union (*Sindicato Unico de Trabajadores de la Educación Primaria*, SUTEP). The couple has five children.

³⁶ *Los Inocentes Tienen Nombre*, p. 224.

At about 9:30 a.m. on November 7, 1993, three plainclothes police detained Tolentino while he was doing the family's weekly shopping in the Barranca market. They tortured him for several days but he refused to confess to any wrongdoing. After blindfolding him and leaving him in a cell for a few hours, the police took him in a van to a Barranca beach with another detainee, a youth. He heard the youth being beaten. Then they stripped Tolentino of his clothes, tied his hands and feet behind his back, and beat him. One kick in the pit of his stomach made him momentarily lose consciousness. They fired a revolver close to his head and an officer gave orders to rape his wife and daughters whom they pretended were in the van.³⁷ Unable to force him to confess to various terrorist crimes, they took him back to the police station, but refused him access to a lawyer or any food.

The next day they took him to the beach again; this time they tied his hands and feet behind his back with an inner tube and a rope, dragged him to the water's edge and submerged his head, beating him on the stomach and head to compel him to say yes to their questions. He again refused. Later he heard two other detainees being beaten and agreeing, amid their screams, to implicate him. The police threatened to kill him if he did not relent and confess. By this time his legs were too weak to support his weight and he had lost sensation in his arms. The police pulled him out of the water, and massaged his legs and arms.

Back at the police station, they continued to deny him access to a state-appointed lawyer or give him any food or water, and he was kept awake in his cell at night. On the following day he was taken to the city of Huaraz and confronted with a terrorist suspect. The suspect, whom he had never seen before, did not recognize him either. Then they returned him to Barranca. On November 15, along with other detainees, he was forced to sign a statement, pre-dated November 7.

While holding Tolentino incommunicado and without access to a defense attorney, police produced a suspect, Amancio Urbano Rivera, who told them in Tolentino's presence that Tolentino had recruited him to the Shining Path and had participated in several terrorist attacks. According to police logs, Urbano Rivera was detained drunk in the street in the early hours of November 7 (the day of Tolentino's arrest), wildly threatening motorists with a revolver, and stealing their money and possessions. Urbano was arrested after a clash with police in which he was shot in the leg.

A few days after the interview with Urbano, police confronted Tolentino with a youth also accused in the case, Orestes Cornejo Manchego, who turned out to be the same person whom he had heard being beaten at the beach. The youth maintained that he knew Tolentino by sight but denied they had ever been together or participated in Shining Path activities.

A state-appointed attorney attended this interview on Tolentino's behalf, but the prosecutor failed to respond to the lawyer's request for another interview to clarify several points. Instead, the police tried to extort money from Tolentino as a condition for his release. During the oral hearing by the military court, the judge again refused to grant the lawyer's request to re-interview this witness, adducing lack of time. The hearing itself lasted only half an hour.

³⁷ Human Rights Watch/Americas interview with Tolentino's wife, Elsa María Stanacco Maguiño, Lima, April 15, 1996.
Human Rights Watch/Americas 22 August 1996, Vol. 8, No. 5 (B)

Tolentino was also accused by a witness of participation in the near-fatal attack on the life of a school director in September 1993. The son of the school director claims to have seen Tolentino throw a banner through the school window and hurl insults before running off. There are, however, strong doubts as to whether the director's son could have identified the person who threw the banner from where he was standing. The banner itself was never produced in the trial, and two teachers who were eye-witnesses denied seeing either the banner or Tolentino (whom they both knew) at the scene. One of these witnesses spoke to the school director before he lost consciousness and he said he had been attacked by "mountain people" (*sujetos de tipo serrano*), and did not mention Tolentino, whom he also knew well. After making a visit to the home of the school director and talking to his wife, Tolentino's wife is convinced that the director's son was pressured by police into signing the statement implicating her husband.³⁸

On December 17, 1993, the special military judge of the army sentenced Tolentino to thirty years of imprisonment for treason, holding him responsible for a Shining Path assassination squad, for involvement in the attack on the school director, and for the burning of three vehicles. His lawyer was not present at the sentencing. During his trial Tolentino's whereabouts were unknown. He was taken on about December 1 to a military detention center and his wife was unable to trace him until December 20, when the International Committee of the Red Cross located him in the basement detention center at the Ministry of Justice.³⁹

On January 8, 1994, Amancio Urbano Rivera, the prosecution witness, wrote from jail to the Supreme Council of Military Justice to say that his accusation against Tolentino was untrue, and alleging that he had been tortured into making it, but the court ignored his retraction.⁴⁰

The accusations involving Tolentino in the burning of three vehicles in separate incidents are all based on Urbano's affidavits, and in each case, witnesses on the scene, including the drivers of the vehicles in question, have either denied Tolentino's participation or were unable to recognize him as one of their attackers.

Rural schoolteacher **Alfonso Rosely Chacón Rodríguez** was also convicted on the basis of a denunciation allegedly made under torture and later retracted. Chacón works alone in a tiny primary school in the village of El Chirimoyo, Cajabamba province, in the department of Cajamarca. Chacón was reportedly a pillar of his community, a regular participant in religious and community meetings and a staunch supporter of Cambio 90, President Fujimori's electoral alliance. On April 1, 1992, police discovered that the main road close to the school had been mined with explosives connected to an electrical detonator. Combing the area they encountered Chacón arriving at the school and arrested him.

³⁸ Human Rights Watch/Americas interview with Elsa María Stanacco Maguiño, Lima, April 15, 1996.

³⁹ This account of Tolentino's arrest and trial is based on his hand-written testimony, dated May 8, 1994, and on an interview with his wife, Elsa María Stanacco Maguiño, conducted by Human Rights Watch/Americas in Lima on April 15, 1996.

⁴⁰ The signed and fingerprinted note says: "I, Amancio Urbano Rivera, 38 years of age, am writing to you to retract the charges I made accusing Mr. Donato Alejandro Tolentino Argandoña of terrorism. I made the charges because I had been subjected to physical and psychological torture."

Amancio Hurbano Rivera con 38 años de edad me dirijo ante Usted para retractarme de los cargos de acusación por terrorismo hechos al señor Donato Alejandro Tolentino Argandoña Los cargos realizados los hice por sometimiento de torturación física y psicológica".

The police found some nails, rusty tins, some electrical cable and two books of popular songs in his house, but apart from this had no evidence against the schoolteacher. Later, however, Santos Gilberto Robles Paredes, a defendant in another case who had been detained since August 1991, denounced Chacón as “comrade Casana,” claiming to have heard from a third party in a bar that the teacher had participated in an attack on a police post in Cauday and a bomb attack on a bank in Cajabamba. However, inquiries with the Cauday police revealed that their post had never been attacked. The attack on the bank occurred on December 31, 1991, when Robles was already in prison; he could not, therefore, have been drinking in a bar after the bombing. On April 22, 1993, Robles sent a sworn statement to Amnesty International and the newspaper *La República* in which he claimed that a police official, José Miguel Borja Vera, had offered to release him and to give him large sums of money if he accused people from a list he showed him.⁴¹ He alleged also that the police tortured him.

In February 1993, a Chiclayo faceless court sentenced Chacón to ten years of imprisonment. After a lengthy appeal process the Supreme Court annulled the verdict for a technical reason entirely unrelated to the soundness of the evidence. The case went back to the higher court of Lambayeque, which repeated the arguments supporting the initial verdict but increased the sentence to fifteen years, without grounds or explanation. The verdict was appealed once more to the Supreme Court, and the court prosecutor determined that the evidence was unsound and recommended the verdict be annulled. A final decision by the Supreme Court was still awaited when this report went to press.⁴²

Pedro Telmo Vega Valle is a shanty town leader from the district of Villa María del Triunfo in the south of Lima, who was convicted of treason by a military court for allegedly participating in a Shining Path car-bomb unit and helping to set up an illuminated hammer and sickle display on a nearby hill in October 1992. Vega was denounced by two fellow-defendants, Enrique Piñeda González and Santiago Aguero Obregón. Throughout the trial both men maintained that they had been tortured into incriminating Vega and did not in fact know him until they met in custody. In an April 27, 1993 statement Piñeda said he had been taken down to the sea and beaten until he agreed to names and events that the police fed him. His captors threatened to kill him if he did not sign blank papers which would be used to involve Vega and others. Vega, a former young Christian and catechist as well as a democratic community leader, is now serving a twenty-five-year prison sentence in Cachiche, Ica.⁴³

D. José Luis Gutiérrez Vivanco

In this case, even the unlikelihood of a hardened terrorist with a disabling congenital heart condition was insufficient to shake the credence given by special judges to a suspect who incriminated him. José Luis Gutiérrez Vivanco is a twenty-five-year old biology student from San Marcos University. He has suffered all his life from a congenital heart malformation consisting of a single ventricle and hyperplasia of the pulmonary artery and mitral valve. This condition, an enlargement of the tissue of the arteries and valve, causes drastically reduced heart function, and symptoms such as nausea, breathlessness, blueness of the skin (cyanosis) and headaches at mild physical exertion. The official medical reports describe the prognosis as “bad.” Gutiérrez has to be regularly hospitalized for tests and blood transfusions and was under treatment in April 1996, when Human Rights Watch/Americas visited him in Lima's 2 de Mayo hospital.

⁴¹ Amnesty received the letter in March 1994. Robles wrote that “every time the colonel set out to arrest someone he got me out of the prison and took me to the place of arrest or to Command headquarters, and forced me to accuse the people and gave me money and food and got me drunk and made me sign documents, making out that it was for the sake of my freedom.” (Amnesty International, *Peru: Prisoners of Conscience*, p. 16)

⁴² Fundación EcuMénica para el Desarrollo y la Paz (FEDEPAZ), “Informe sobre la Situación Jurídica de Alfonso Rosely Chacón Rodríguez, Inocente Profesor Condenado a Diez Años de Pena Privativa de la Libertad,” Manuscript, Lima, April 12, 1996.

⁴³ FEDEPAZ, “Informe sobre la situación jurídica de Pedro Telmo Vega Valle, Dirigente Vecinal Condenado Injustamente por un tribunal militar por el delito de traición a la patria a veinticinco años de pena privativa de la libertad,” Lima, April 10, 1996.

Gutiérrez was arrested on August 27, 1992, apparently as a result of his relationship with a girl whom he had recently started dating. (Like Gutiérrez, the girl was subsequently convicted of terrorism.) DINCOTE agents beat Gutiérrez during his arrest so badly that he had to be transferred to the police hospital shortly after arriving at the DINCOTE headquarters. From there, he was transferred to the 2 de Mayo hospital, where doctors diagnosed chronic cardiac insufficiency and severe hypoxia. Given his condition, the police decided not to take a statement from him.

DINCOTE accused Gutiérrez of participating in a string of terrorist attacks, two of which occurred in different parts of Lima with an interval of only fifteen minutes between them. The witnesses who testified against him contradicted one another as to which incidents he had been involved in, and what his alias was. None of the eyewitnesses or victims of the attacks remembered seeing Gutiérrez at the time. Only two of the witnesses admitted to knowing him. One was his girlfriend, and the other, Alejandro Lázaro Gago, altered his story and later claimed that Gutiérrez was not the terrorist known as “Carlos” he had originally claimed him to be.

The court considered that the testimonies showed that Gutiérrez was guilty. As for the medical evidence, the court argued that it “could not serve as a legal basis to exempt him of all responsibility for the crime imputed to him.” He received a twenty-year sentence and on February 28, 1996, the Supreme Court declared it sound. Gutiérrez's need for regular transportation and care in the hospital has created problems with the prison authorities who say they do not have the staff or transportation to cope with his needs.⁴⁴

E. Mirtha Ira Bueno Hidalgo

Mirtha Ira Bueno Hidalgo, whose acquittal by a trial court was confirmed at the appellate level, was ordered to stand trial again by the Supreme Court on the grounds that the trial court had failed to weigh the evidence satisfactorily.

Without presenting any new grounds or evidence against her, the appellate court then sentenced her to twelve years of imprisonment.

With a legal system heavily biased against the defendant, everyday circumstances can put an innocent person on the wrong side of the law. A dedicated law student in her early twenties, Mirtha Ira Bueno Hidalgo fell asleep on the bus in the early morning and woke up in the wrong part of town. While waiting for transportation to take her back to her destination she was arrested on suspicion of hanging posters for the Shining Path. Bueno was absolved and released, but almost two years later the Supreme Court unaccountably ordered her arrested and tried again. A faceless court then convicted her of terrorism.

On the day of her initial arrest, August 10, 1990, Bueno was in her third year at the San Marcos University Law School. She was a conscientious student with above-average grades, who did not like missing assignment deadlines. Urgently needing some law books that day, she decided to get up very early as she had done in the past, to borrow them from a fellow-student who left home early for work. On the minibus ride to the Breña district where her friend lived, Bueno nodded off and awoke with a start to find herself some distance from her destination, in the Avenida Argentina. She got off the bus at a spot where the police were searching for a group of youths who had been sticking up posters in the early hours for the Shining Path. Police promptly arrested Bueno without explanation, covered her head and took her for interrogation to a police station.⁴⁵

Although Bueno carefully explained the reasons for her presence in the neighborhood, the police did not believe her and accused her of carrying Shining Path leaflets. She denied that she had ever had the leaflets, and a police handwriting expert was unable to determine their authorship with confidence. The “discovery” of the leaflets was, in

⁴⁴ Data from the Asociación Pro Derechos Humanos (APRODEH) and interviews with Gutiérrez in the 2 de Mayo hospital and with María Vivanco González, Gutiérrez's mother, Lima, April 16, 1996.

⁴⁵ Human Rights Watch/Americas interview with Rosa Quedena, (FEDEPAZ), Bueno's defense attorney, Lima, April 9, 1996.

any case, highly irregular: the public prosecutor was not present when the record was drawn up, nor was it signed by Bueno.

Police also performed handwriting tests on purportedly subversive manuscripts seized during a subsequent search of Bueno's home. After comparing the documents with samples of the suspect's spontaneous writing, the experts concluded this time that Bueno had indeed written them. The "subversive" documents were, in fact, handwritten quotes from *The Rebellion of the Masses* by the Spanish conservative political philosopher José Ortega y Gasset, a far cry from a revolutionary tract. In fact, Bueno was working on an assignment on his ideas at the time. There was no other evidence against her.

Bueno and her two fellow defendants in the case, Valentín Meza Chávez and Victor Hugo Mezarina Ruíz, were duly acquitted by the Higher Court of Lima, but in late 1994 the Supreme Court ordered a re-trial because of failure to complete a paperwork formality. On November 12, 1995, Bueno was re-arrested and imprisoned in Santa Mónica prison. On March 26, 1996, the Special Chamber of the Higher Court of Lima (*Sala especial de la Corte Superior de Justicia de Lima*) sentenced her to twelve years of imprisonment for terrorism. The court adduced no new grounds or evidence to justify the change of verdict.⁴⁶

F. Julio Rondinel Cano

Julio Rondinel Cano, a student of psychology, also found himself in the wrong place at the wrong time when the bus which was taking him home from a parents' meeting broke down between 8:30 and 9:00 p.m. on the corner of Miegg and Dueñas streets in Lima.

According to the police report, there had been a noisy Shining Path demonstration at that time in the area. When the police arrived, the participants scattered amid gunshots and firecracker explosions. Rondinel has consistently maintained that he was detained in the street after getting off the bus. The police, however, claimed to have detained him in a private house into which he had fled, and that the owner recognized him in a police lineup. The identification was questionable from several angles: there was a power failure at the time, and it was pitch dark; two other people who the police claimed had entered the house and were detained at the same time as Rondinel were never identified; three lodgers present at the time saw nothing of the three arrests. Most telling of all was the evidence of the bus driver who confirmed that his vehicle had indeed broken down at the time and place that Rondinel had stated. Rondinel could not have known this if he had been in the house.

Rondinel was acquitted in April 1994, and released, but the Supreme Court quashed the verdict and ordered a retrial. Rather than face indefinite imprisonment, Rondinel has not presented himself to the authorities.⁴⁷

G. Demetrio de la Cruz Sandoval

The speed and anonymity of trials under the faceless court system, as well as extremely lax standards for evaluating evidence, make the detection of malicious accusations by police or military officials difficult. Several cases have been uncovered, however, in which the courts have been used to settle scores or exact revenge on enemies, to extort money or to silence critics or political opponents. Demetrio de la Cruz Sandoval, a twenty-one-year-old peasant from the province of Paucar de Sara, Ayacucho department, was sentenced by a military court for a crime he did not commit because he failed to pay the ransom demanded by a military officer for the release of his brother-in-law.

⁴⁶ In fact, the sentence included an extraordinary anomaly: it called for judgment to be reserved for the time being in the case of Meza Chávez, although the Special Chamber had in fact acquitted Meza Chávez the previous October. Bueno's lawyers are convinced that this mistake would have been impossible if the judges had read the file before pronouncing a verdict. Interview with Dr. Rosa Quedena, FEDEPAZ, Lima, April 9, 1996.

⁴⁷ FEDEPAZ, *Informe sobre el caso de Julio Rondinel Cano*. Lima, March, 1996.

De la Cruz, who is married and the father of two children, had played an active role in the *rondas campesinas* in the community of Chacari, where the family had been living since early 1993.⁴⁸ On February 20, 1994, de la Cruz went to the military base at Vilcashuamán to inquire about the situation of his brother-in-law who was detained there. A non-commissioned officer (sub-oficial), Williamas Palacios, allowed de la Cruz to speak to his brother-in-law, and afterwards told him to return and to bring his wife and two horses for him. On the following day, de la Cruz returned, accompanied by his brother-in-law's wife, but without the horses. Palacios was angry and detained both of them at the base, accusing de la Cruz of participating in a massacre in the village of Pirhuabamba committed by the Shining Path in October 1993. While at the base, soldiers allegedly tortured de la Cruz and made him sign a statement incriminating himself, without the presence of the prosecutor or a defense attorney, both of which are required by law. During the night after their arrival at the base, soldiers took away de la Cruz's brother-in-law's wife, refusing to heed her pleading to be released because she was a mother. He later heard her shouting and sobbing and fears that she was raped. Both she and her husband were later released.

In his defense, de la Cruz insisted that at the time of the massacre he and his wife were in the community of Chacari, attending the wedding of a friend. Both the friend and two members of the *rondas campesinas* who were also present at the wedding confirmed this. Later that afternoon, de la Cruz joined the other *ronderos* in responding to the emergency.

Two survivors of the Pirhuabamba massacre, in which fifteen peasants were killed, identified de la Cruz as one of the Shining Path guerrillas who chased them when they were attempting to escape. However, de la Cruz's defense lawyers say they have established that the two fled from different locations, making it impossible for a single person to have pursued both of them. Furthermore, many witnesses of the incident concurred that the attackers had been wearing ski-masks and could not be easily identified.

In April and October 1995, police agents captured five self-confessed members of a Shining Path gang which allegedly carried out the Pirhuabamba killings. In their declarations to the police and the military prosecutor, none claimed to know de la Cruz, much less confirm his participation in the massacre. Furthermore, a fifteen-year-old boy, Róger Suárez Soto, whose parents died in the massacre and who was himself kidnaped by their killers and lived with them until their arrest on October 4, 1995, stated that he did not see de la Cruz participate, and in fact did not even know him.

On September 20, 1994, the Special Military Judge of the Second Zone in Ayacucho sentenced de la Cruz to ten years in prison for treason. The army military court doubled the sentence on appeal to twenty years. De la Cruz's defense petitioned for the sentence to be annulled by the Supreme Council of Military Justice, and asked for permission to address the court. The court failed to reply to this request and the lawyers learned after the event that on October 14, 1995, the Supreme Council had confirmed the twenty year sentence. The court delivered its verdict well after the date that the identities of the real Pirhuabamba killers were known.

H. Aurelio Ventura Mendoza and Efraín Terazona Tinoco

Although prosecutors are required by law to be present during police interrogations, this is often not the case. The official stamp and signature of the prosecutor has appeared on detainees' police depositions, even though the prosecutor has been absent when the statement was taken. In both cases described below judges declined to investigate these fraudulent signatures.

⁴⁸ *Rondas campesinas* are community-based civil defense patrols, which have traditional roots in the north, where they have long substituted for ineffective central government law enforcement. In the south, some communities formed civil defense committees in the mid-1980s—first at the army's behest and later some of them voluntarily—to defend against Shining Path incursions. In recent years, the army has also encouraged—and sometimes forced—peasants to form committees, which are then used in joint army-civil defense operations, to attack guerrilla columns. Some *rondas* have been implicated in human rights violations, acting either alone or with the army.

Aurelio Ventura Mendoza, forty-seven, a peasant from the hamlet of Cerro Chugo in Cajabamba province, was arrested in Cajamarca on May 4, 1995, after being pointed out to police as a Shining Path member by a former president of the local *ronda campesina*. According to the Instituto de Defensa Legal, which is defending Ventura, the denunciation was a malicious act of revenge by the former *ronda* president, whom Ventura had reported to the police in 1993 for cattle theft. Ventura was also accused of the murder of his own son Jaime, and of burning to the ground his own home in October 1992. This crime was in fact committed by four members of the Shining Path whom Ventura had denounced to the police at the time. A faceless civilian court in Chiclayo sentenced Ventura in January 1996 to twenty years of imprisonment, citing a statement he had given to police in which he admitted being forced to join the guerrillas. In June 1995, however, Ventura protested to the judge that he had been forced by the police to sign it “on threat of punishment” and that the provincial prosecutor (*fiscal provincial*) was not present. This was confirmed by the prosecutor himself, Julio Cabrejo Delgado, who called for the charges to be dismissed. The prosecutor's stamp and signature, nevertheless, appear at the bottom of the deposition in question, indicating that the police probably forged them. Nonetheless, the court convicted Ventura without investigating the police wrongdoing.⁴⁹

A Lima faceless court convicted **Efraín Tarazona Tinoco**, a twenty-nine-year-old electrician, of terrorism and sentenced him to twenty years in prison after police allegedly planted a flier with the words “DEVELOP THE GROWING POPULAR PROTEST” among his personal effects during a search of his home. The police persuaded Tarazona to sign the search record by threatening to arrest his mother. Both Tarazona and his relatives testified that the provincial prosecutor was not present. While being questioned later by police he had a glimpse of the record and noticed to his surprise that the provincial prosecutor's signature was on it.⁵⁰

I. Jesus Alfonso Castiglione Mendoza, Santosa López Flores, Juan Teodisio Ibarra Padilla, Emeteria Quispe Chilce, and Eduardo Ccanaza Nina: convicted for unwitting “collaboration”

Effective and just anti-terrorism laws must ensure that those who collaborate with terrorists unknowingly are not punished as if they had knowingly committed a crime. The laws must also be capable of distinguishing between those who collaborate because they are coerced or out of fear, and those that do so because they identify with terrorist goals. Likewise, the terms of the law must discriminate carefully between levels of criminal responsibility by fixing the penalties in strict accordance with the gravity of the offense. One of the most serious criticisms of Peruvian anti-terrorism laws and jurisprudence has been its failure to accomplish any of these objectives satisfactorily.

⁴⁹ Manifestación de Aurelio Ventura Mendoza; Reapertura de la Instructiva del Encausado Aurelio Ventura Mendoza, Cajamarca, 5 de junio de 1995; Dictamen del Dr. Julio Cabrejo Delgado, Fiscal Provincial Provisional, Primera Fiscalía Provincial Mixta, Cajamarca; Sentencia, Tercer Juzgado Penal, Cajamarca, Instrucción No. 93.95, Chiclayo, 26 de enero de 1996.

⁵⁰ *Asociación Pro Derechos Humanos (APRODEH)*, “Casos de Personas Condenados que Son Inocentes y Cuya Revisión de Procesos está Solicitando APRODEH.” Lima, 1995, pp. 19-21.

Journalist **Jesus Alfonso Castiglione Mendoza** was a victim twice over. First, his name was fraudulently used by a Shining Path member to rent a room in Huaraz, department of Ancash, from which the group planned an attack on a local prison. Then, after the attack, in which one policeman died and eight guerrillas escaped, Castiglione was accused and convicted of assisting the guerrillas by providing the room. Although the guerrilla who impersonated Castiglione told the police that he did not know him, and had used his name without Castiglione's knowledge, on August 19, 1994, a Lima faceless court sentenced Castiglione to twenty years. His lawyers appealed, and after a long delay the Supreme Court quashed the verdict and ordered a new hearing. On November 21, 1995, despite powerful evidence of his innocence presented by his lawyers, another Lima faceless court pronounced him guilty and confirmed the twenty-year sentence. Castiglione, after listening to the sentence, said in a broken voice: "I am innocent, this is an injustice, gentlemen, you are wrong."⁵¹

Castiglione, who was an independent candidate in the municipal elections in Huaraz in February 1993, received death threats from the Shining Path during the campaign and was provided police protection. Participation as a candidate in an election at that time could be considered an act of defiance against the Shining Path, which boycotted the campaign and murdered and harassed candidates.⁵² In an open letter to President Fujimori written from prison, Castiglione, who is a practicing Buddhist, declared himself opposed to terrorism whatever its political ideology. "Its methods and actions are always to be condemned, because they violate human rights, above all the fundamental right to life," he wrote.⁵³

Castiglione has been adopted by Amnesty International as a prisoner of conscience. He has been made an honorary member of International PEN and in May 1996 was awarded by Human Rights Watch the Hellman-Hammett prize for politically persecuted or unjustly detained journalists.

Santosa López Flores, a peasant from Huaraz who lived alone with her elderly mother, stumbled on a terrorist cell when she was watching over a neighbor's house and noticed someone coming out of the door carrying a white sack. Thinking that someone was robbing the house, she challenged the person to show her what was in the sack. Then a second person appeared and the two, after opening the sack, threatened her not to tell anyone what she had seen. In the weeks that followed, the two returned on several occasions to her home. Then others followed. A Shining Path cell began using her home regularly as a meeting place and deposit for illegal materials. López was too scared to tell the police. After her arrest she collaborated fully with them and described in detail everything that had happened to her. She was treated with scepticism and scorn and received sexist taunts from the judges.⁵⁴ Although Santosa's predicament should have been evident to the court, given the conflictive reputation of Huaraz, it sentenced her in 1995 to six years of imprisonment for terrorism. Her mother was left alone to fend for herself.

Juan Teodisio Ibarra Padilla, a twenty-five-year-old maker of wooden fruit boxes, worked from a small shop in La Victoria, Lima, an area where the Shining Path had a strong presence for several years. One night in June 1992 he noticed some strangers unloading crates from a truck half a block down the street. One of the strangers accosted him, pinned him to a wall, and warned him to say nothing about what he had seen, threatening to kill him if he went to the

⁵¹ *La República*, November 23, 1996, cited by Office of the Human Rights of Journalists (OFIP, Lima) communication by Internet at anpofip@attmail.com.

⁵² Shining Path hit squads assassinated more than fifteen candidates, family, and helpers in January 1993 during the municipal election campaigns, according to press reports of that time. Press summaries provided to Human Rights Watch/Americas by the APRODEH documentation center.

⁵³ *Los Inocentes Tienen Nombre*, p. 251.

⁵⁴ According to the Instituto de Defensa Legal, which defended Santosa López, a faceless magistrate made the following jibe: "obviously they (the terrorists) were going to your house for you to sleep with them. They were your lovers. Don't lie to us, don't pretend that they threatened you..." (Letter to Human Rights Watch/Americas, April 23, 1996)

police. Ibarra thought the men were common criminals and kept quiet, not even telling his family what had happened. Two days later, soldiers combing the area for terrorists called on Ibarra and asked him if he had seen anything suspicious over the past few days. He told the lieutenant who interviewed him what had happened and took the soldiers to the spot where the strangers had left the crates. The soldiers discovered polyethylene sacks containing explosives.

The soldiers treated Ibarra immediately as a suspect and took him to an army base and from there to DINCOTE, where he recognized two women, one who had been accompanying the man who had threatened him. He also recognized another woman, a confessed Shining Path member. The police investigation determined that the proximity to Ibarra's workshop of the drop chosen by the guerrillas had been purely coincidental. Nevertheless, on June 18, 1993, a Lima faceless court gave Ibarra a twenty-year prison sentence, even though it acknowledged that Ibarra "[d]id not know that the boxes they left him to guard contained dynamite and acted out of fear of their threats." The lieutenant who had visited Ibarra failed to record that the suspect had, in fact, informed for the police.⁵⁵

Emeteria Quispe Chilce, a robust and energetic woman in her mid-thirties, is serving a twenty-year prison sentence for terrorism in Lima's Santa Mónica prison for women. Quispe had worked for years as a street vendor in the Lima slum district of La Victoria. Originally from the Ayacucho province of Victor Fajardo, she came to Lima in her late teens with her older brother, Maximiliano.⁵⁶

Quispe and her brother worked in the market in La Victoria. Quispe sold soft drinks and snacks off a cart at the bus-stop, getting up every day at 3:00 a.m. to purchase her wares from the wholesaler and catch the early morning trade. She and Maximiliano rented a small home together. Then she fell in love, and in 1986 her first daughter, Juanita, was born. Quispe had two more children in 1989 and 1993, Humberto and Haydée. But on two occasions her partners abandoned her, leaving her alone with her children. She was coping alone with them when the two oldest came down with cholera.

At about that time, in August 1993, a regular customer, a student who introduced herself as "Victoria," approached Quispe in the market and helped her carry her things back home. She asked Quispe if she would rent her a room on the ground floor of her house where she could study with some friends. Quispe, who trusted the girl and needed the money and the help, agreed. For three months "Victoria" would visit Quispe, sometimes in the company of friends, and occupy the room. Quispe later told the police that the arrangement ended in October, when "Victoria" said that she did not want to continue using the room because of the frequent police raids in the neighborhood.

On March 30, 1994, a terrorist bomb exploded in the Peruvian Telephone Company in the center of Lima, causing considerable damage. Following the blast, police arrested two suspects, Guillermo Quispe Chipana and Nery Juana Alvarez Chávez, and handed them over to DINCOTE. Under interrogation, both of these suspects told police that Emeteria Quispe was one of a group of Shining Path supporters who had provided members of the organization with food, lodging, and money. Police arrested Emeteria Quispe the following day (March 31) and later detained nine other alleged guerrillas. A military tribunal sentenced Guillermo Quispe Chipana and Nery Juana Alvarez Chávez to life imprisonment for treason. On June 15, 1995, a faceless tribunal of the Lima Superior Court sentenced Emeteria Quispe and all but one of her co-defendants to twenty years of imprisonment as accomplices.

⁵⁵ APRODEH, "Juan Teodisio Ibarra Padilla (35), Vendedor de Cajones de Fruta Condenado a 20 años," Lima, undated manuscript.

⁵⁶ Maximiliano described her birthplace as a "small town surrounded by four mountains. When it doesn't rain, there is no produce and the people practically die of hunger. So they go to look for work in the capital." In the Quispe's case there was another reason. Their father left home when Emeteria was three and went to live with another woman. Their mother found another man, but he rejected and ill-treated them. (Human Rights Watch/Americas interview with Maximiliano Quispe Chilce, Lima, April 17, 1996)

The only evidence in the court file implicating Quispe is the initial identification made by the two witnesses against her, both of whom subsequently retracted their statements before the judge, affirming that they had been forced to sign their declarations after being threatened and mistreated. They insisted to the judge that they did not, in fact, know Quispe at all. In a summing up, the court maintained that Quispe had admitted in her declaration to the police to being a Shining Path militant "in her capacity as a support person." In fact, all that she admitted to was having rented the room out to "Victoria." Furthermore, she denied participating in or knowing what took place in the meetings held on the first floor, or to having previously met any of her co-defendants. The court cited no evidence to disprove these claims, nor does the file indicate that the prosecutor made any serious effort to find any.⁵⁷

In 1989 the community of Ajanani Chico in the province of Azangaro, Puno Department, where **Eduardo Ccanaza Nina** lives, was targeted by the Shining Path for a recruitment drive. Guerrillas assembled all the villagers in the school and distributed stolen sheep as gifts, while making the peasants chant slogans praising "President Gonzalo."⁵⁸ Ccanaza was detained in a routine army check and later accused of having received two head of sheep and chanting terrorist slogans. There was no evidence to suggest that his involvement with the Shining Path went any further than that, and he testified that after this single contact the guerrillas did not return to the village. For this a faceless court convicted him of terrorism and sentenced him to twenty years in prison. In August 1995, the Supreme Court reduced the penalty to ten years.⁵⁹

V. ABUSES BY ARMED OPPOSITION GROUPS

"Shining Path leaders exalt the cold-blooded murder of their ideological foes in open defiance of human rights values" we wrote in our last report on Peru.⁶⁰ Such abuses are not combat-related excesses but an integral part of the Shining Path's strategy, which has always favored the selective elimination of their political opponents, carried out by so-called "annihilation commandos" (*comandos de aniquilamiento*), and indiscriminate attacks on civilian targets, designed to cause terror and panic in the civilian population. As political circumstances have changed, so have the targets chosen for attack, but the tactics have remained the same: selective murder tailored to ram home a political message and terrify would-be opponents. In recent years, apart from the Shining Path's traditional enemies: members of peasant civil defense groups (*rondas campesinas*), elected local government officials, community leaders, grassroots activists and trade unionists, victims have included arrepentidos (former guerrillas who have renounced the Shining Path and cooperated with the police) and even members of opposed tendencies within the organization itself. Since our first report on Peru in 1984, Human Rights Watch/Americas has reported on violations of the laws of war by the armed opposition as well as government forces.⁶¹

⁵⁷ Case documents provided by the Instituto de Defensa Legal; and letters to Human Rights Watch/Americas from Quispe's defense attorney, Dr. Norma Rojas.

⁵⁸ President Gonzalo is the nom-de-guerre of Abimael Guzmán, the founder and leader of the Shining Path, in prison since his arrest in September 1992.

⁵⁹ FEDEPAZ, "Informe sobre el caso de Eduardo Ccanaza Nina," Lima, February 1996.

⁶⁰ Human Rights Watch/Americas, "Peru: Two Faces of Justice," p. 50.

⁶¹ The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address internal armed conflicts. Article 3 is the standard which applies where guerrilla forces do not exercise formal, consistent control over population or territory, as is the case in Peru. Common Article 3 prohibits mistreatment of individuals taking no active part in hostilities, including combatants who have laid down their arms or have been placed *hors de combat* for any reason. Strictly prohibited are: violence, including murder, mutilation or torture; humiliating or degrading treatment; and the passing of sentences and carrying out of executions without previous judgment by a regularly constituted court affording guarantees of due process.

The application of Common Article 3 does not affect the legal status of parties to a conflict, nor does it confer any special status on the armed opposition.

Terrorist groups are believed responsible for 252 political assassinations in 1995, of which 222 are attributed to the Shining Path, four to the MRTA, while the authorship of twenty-six is unclear. Selective killings more than matched in number those killed in combat (250, of whom 191 were guerrilla combatants).⁶² While the numbers have diminished significantly since 1992, when 946 political assassinations were attributed to the Shining Path, the decline clearly reflects an overall reduction of armed activity rather than any change in tactics by the guerrillas.

Government successes against the Shining Path and especially the arrest of its leader Abimael Guzmán and leading cadres in 1992 has led to a bitter struggle within the organization. Guzmán, in a series of letters from prison, has ordered his followers to relinquish violent action and press for a "peace accord" with the government. A former Guzmán aide-de-camp, Oscar Ramírez Durand, "Feliciano," has accused Guzmán of capitulation and continues to lead a faction, known as *Sendero Rojo* (Red Path), dedicated to violent harassment and the overthrow of the state. One of the first political assassinations committed by the Shining Path in 1995 was the murder of Lima Shining Path cadre Manuel Cajavilca Cuete, whose body was found on January 22 on wasteland near the Panamericana Norte highway, thirty kilometers from Lima. On the body was a placard with the words "Snitch, defender of the Peace Agreement."⁶³

While relative calm has returned to much of Peru's countryside, terrorist groups believed to be under Feliciano's command remain entrenched in the Upper Huallaga Valley, and the Departments of Piura, La Libertad, and parts of Ayacucho. Most MRTA actions have been concentrated in the central jungle region in the department of Junín. Recently, there are signs that the Shining Path faction led by Feliciano is once again organizing and attempting to recover a toe-hold in working class districts of Lima.

Some of the most brutal abuses in 1995 occurred in the Department of San Martín, and the adjoining department of Huánuco, in the Upper Huallaga, a center of coca cultivation and the production and trafficking of cocaine paste. Killings in this region have become a daily occurrence, reportedly due to wars between rival gangs of drug-traffickers competing for shares in a contracting market. A Peruvian human rights investigator who visited the area in January 1996 reported:

The people say that the authorities have done virtually nothing to stop the wave of crimes and violence which has shaken the town. They (the authorities) live virtually ensconced inside the army base, obviously out of fear of the Shining Path. Here the judge, the prosecutor, the governor, the mayor and his officials, the police and the army have their homes and offices. No one ventures outside without a heavy police escort.⁶⁴

Most of the killings took place in villages along the stretch of highway between Tingo María and Tocache, which runs parallel with the Huallaga river and intersects areas through which the Shining Path is known to operate.

In February 1995, Red Path members assassinated twelve people, reported to be former guerrillas who had recanted, in Aucayacu, a town of some 16,000 inhabitants some forty kilometers north of Tingo María.

A journalist living in the zone described the guerrilla column as:

[m]ade up of people from the area and outsiders who come from Ayacucho or Huancayo. In the most recent incursions as many as a hundred have arrived, among them children and old people. That means that they have recruited whole families who may be with them against their will.

⁶² Coordinadora, *Informe*, 1995, p.74

⁶³ Isaías Rojas Pérez, "Sendero(s) Luminoso(s): Guerra de Supervivencia, *Ideele*, No. 82-83, December 1995, p. 103.

⁶⁴ See Isaías Rojas Pérez, "El Alto Huallaga: Valle de Violencias," *Ideele*, No. 84, February-March 1996.

Everyone knows that the Senderistas are entering the villages to search out their former leaders, who now really don't want anything to do with them, and flee as soon as they know the terrorists are coming.⁶⁵

On October 4 and 5, 1995, some two hundred members of this group were reported to have entered twelve villages in the area, and to have killed at least twenty people, as well as burning their homes and killing their animals. In Pucayacu, about fifty kilometers north of Tingo María, the Senderistas rounded up peasants and hacked to death with machetes eight who had been identified as *ronderos*, repentant guerrillas, or local leaders.

On October 1, 1995, a Shining Path column murdered with machetes four peasants in the village of Situlli, Progreso province. Fifty guerrillas armed with assault rifles blocked the road to Tocache and intercepted the villagers on their way to their fields. The four victims were hacked to death after a mock trial in which they were accused of collaborating with the army.⁶⁶

The killings continued in 1996. On January 7, Shining Path members killed with a machete Luis Rigoberto Ramírez, aged seventy-two, and his eighteen-year-old daughter, Lisbeth Ramírez Lozano, in a village two kilometers from Nuevo Progreso, Tocache. On February 9, terrorists attacked the village of Río Frío, near Angasyacuy in the province of Crespo and Castillo where they allegedly executed the chairwoman of the Río Frío Glass of Milk Committee, Rora Huamán Meza, and her two sons, Hugo Morales Huamán and Eli Morales Huamán.⁶⁷

On May 12, 1995, about twenty Shining Path guerrillas entered the community of San José de Belén, Huancavelica, whose inhabitants had recently returned after leaving the zone for the relative safety of the city of Huancayo. The guerrillas demanded payment of a war tax of 1000 *soles* (approximately \$450), which the villagers were unable to pay. A survivor told how the guerrillas then murdered six of the villagers and burned their homes. Among the dead were Luis Huarcaya Priona, Marcelina Mendoza Antonio, Andrés Mendoza Hilario, Bernanina Ccente, Adrián Asto Huarcaya and Yessica Asto Huarcaya.⁶⁸

Urban community leaders have also been targeted for assassination by the Shining Path. Victims in 1995 included former mayor of Pativilca Humberto Olivares Villar and his wife, María Zenaída Casas, killed on July 10, reportedly because Olivares had refused to heed pressure from the Shining Path to resign from his role as president of the civil defense committee of El Porvenir, a poor residential community in Barranca, a Lima district.⁶⁹

Assassinations and death threats were reported in other poor residential areas in Lima, such as Raucana, Villa El Salvador, and Huaycán, where for years the Shining Path has tried to wrest control from elected community leaders. There were disturbing signs of a resurgence of terror tactics in what appeared to be an effort to regain a foothold in these communities, which once had been Shining Path strongholds. A Shining Path assassination squad is reported responsible for the killing on June 30, 1995, of Pedro Díaz Maldonado, General Secretary of the FAM aluminum factory union in Até Vitarte, who had opposed Shining Path infiltration of the union.

⁶⁵ Venancio Sarasara, "Alto Huallaga: Abusos de Todas Partes," *Ideele*, No. 82-83, December 1995, pp. 111-113.

⁶⁶ *La República*, October 2, 1996. For analysis of the violations of international humanitarian law these mock trials represent, see Human Rights Watch/Americas, "Peru: The Two Faces of Justice," pp. 46-50.

⁶⁷ Note Verbale dated April 1, 1996, from the Permanent Mission of Peru to the United Nations, addressed to the Secretary General. U.N. General Assembly, Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms, April 2, 1996, A/50/912. The killings were reported in the Peruvian daily newspapers *Expreso* and *Comercio* on February 11, 1996.

⁶⁸ Human Rights Watch, *World Report 1996*, p.116.

⁶⁹ *La República*, July 11, 1995

On March 6, 1996, Red Path settled accounts with an old Shining Path foe, Pascuala Rosado Cornejo, founder and leader of the self-help community of Huaycán. Rosado's popularity caused a rout of the Shining Path in May 1991, when the community voted in an assembly to continue the self-help strategy she championed, and elected a committee determined to clean up and develop the neighborhood, which had acquired a reputation as a "red zone." Rosado organized a self-defense committee to combat local crime. Following an assassination attempt in 1992 and repeated death threats, Rosado left the country in May 1993 and lived for two years in Chile. Since her return to Peru in December 1995, Rosado had avoided political activity and had been living as an ordinary citizen in Huaycán. The two men and one woman who participated in her killing shot Rosado in the head in the street and scattered leaflets around the body. The leaflets called for a continuation of the "peoples war" and read: "SMASH the LOD!" (the Spanish acronym means "right-wing opportunistic line").⁷⁰

The names of five other Huaycán leaders including Leonidas Centeno Pacheco, Pedro Arévalo Torres, and Javier Ramón Figueroa were mentioned on the leaflets found near Rosado's body. Like Rosado they had been provided police protection because of continuous threats, but the police guard was withdrawn in October 1995.⁷¹

The widow of a former leader of the community of Raucana, Simeón Máximo Cahuana Huamán, who was murdered by the Shining Path on April 15, 1994, told Human Rights Watch/Americas that she received death threats shortly after returning to Raucana in March 1996, after a long absence. A colleague of Cahuana, Carlos Lavallo was also killed in 1994; like Cahuana he also had been repeatedly threatened beforehand.⁷²

Michel Azcueta, mayor of Villa El Salvador, also received veiled warnings which appeared in an issue of the pro-Shining Path newspaper, *El Diario Internacional*, in which he was accused of implementing a security plan "inspired by fascism" (*inspirado del fascismo*) and which amounted to "a new version of the urban rondas" (una nueva modalidad de rondas urbanas).⁷³

The Túpac Amaru Revolutionary Movement (MRTA) was responsible for four targeted assassinations in 1995; three of the victims were civilians.⁷⁴ In December, police foiled an MRTA plan to kidnap leading parliamentarians and barter them in exchange for MRTA leaders currently in prison. A National Police raid on a house in the residential district of La Molina in the early hours of December 1 was followed by a long gun battle in which three MRTA guerrillas and one policeman were killed. The guerrillas holed up in a neighboring house, where they took two women and three children hostage and barricaded themselves in, before eventually surrendering and releasing the hostages. Among those captured was MRTA leader Miguel Rincón Rincón, and Lori Helene Berenson, a U.S. citizen, who had been arrested beforehand. Her case is discussed below.

VI. U.S. POLICY

Ever since the Commission of International Jurists, created by the Clinton administration to study the Peruvian judicial system after Fujimori's 1992 coup, delivered its report in March 1994, U.S. officials have toned down public criticism of the faceless courts. Evidently, the administration was discouraged by the hostile reception given the report by President Fujimori and his government. Nonetheless, several limited reforms of the system were introduced both

⁷⁰ Isaías Rojas, "Sendero Luminoso: Fantasma que Quiere Guerra," *Ideele*, No. 85, April 1996, p. 57; and Human Rights Watch/Americas interview with Isaías Rojas, IDL, April 17, 1996.

⁷¹ Human Rights Watch/Americas interview with Leónidas Centeno Pacheco, Lima, April 17, 1996; and "Amenazan matar a dirigente vecinal, es el sucesor de Pascuala Rosado en Huaycán," *La República*, April 15, 1996.

⁷² Human Rights Watch/Americas interview, Lima, April 17, 1996.

⁷³ *El Mundo*, March 12, 1996.

⁷⁴ *Coordinadora. Informe. 1995*, p.77.

before and after its publication, showing that the initiative was an important source of pressure on the Fujimori government.

Yet instead of maintaining this public pressure, the State Department has retreated into quiet diplomacy, which officials claim to be more effective. There is little evidence, however, that U.S. quiet diplomacy regarding the faceless courts has had any effect in Peru. If failed quiet diplomacy is not followed up by public pressure, it has little or no impact. The Clinton Administration has made some positive statements on human rights in Peru and has taken some useful initiatives, but these efforts have fallen short of a concerted effort to convince President Fujimori that it is in his interest to end the abuses described in this report. The fact that an American citizen, Lori Helene Berenson, has become a victim of these unfair trial procedures, gives the Clinton Administration an important opportunity to press the Fujimori government. Washington should seek to build a coalition of Peru's international donors in favor of ending the abuses represented by the faceless courts in Peru and use every forum available, from the United Nations to the World Bank, to press urgently for the necessary changes.

The Clinton Administration has several assistance channels to Peru which could be used as a lever for change. In fiscal year 1997, the administration has requested \$25 million in assistance for counternarcotics programs, much of this for the police. In addition, the administration proposes in its fiscal 1997 budget request, to provide a small amount of assistance to the Peruvian navy, reversing a ban on military aid in effect since 1992 because of human rights abuses. Human Rights Watch/Americas and the Washington Office on Latin America (WOLA) have urged U.S. lawmakers to prohibit this military aid, bearing in mind that the navy has been involved in egregious human rights violations in 1995, which remain unpunished. The administration also has provided an estimated \$100,000 worth of arms sales to the Fujimori government in fiscal year 1996 and has indicated plans to make a similar sale in 1997.⁷⁵

In addition, the Clinton Administration has failed to use its voice and vote at international financial institutions, to oppose loans to Peru which are not exclusively dedicated to meeting basic human needs. Such action would be consistent with U.S. law, which requires the administration to contest loans to countries whose governments engage in "a pattern of gross violations of internationally recognized human rights."⁷⁶ The deprivation of liberty through systematic due process denial to thousands of individuals, in our view, constitutes precisely such a pattern.

⁷⁵ U.S. Department of State, *Congressional Presentation Document*, Fiscal Year 1997, p. 456.

⁷⁶ Section 701 (a), *International Financial Institutions Act*.

The Clinton Administration has taken the highly commendable step of using AID funds to support human rights work in Peru, to the best of our knowledge unprecedented in Peru. The United States is contributing AID funds to the Instituto de Defensa Legal (IDL), the Peace Study and Action Center (CEPAZ), the Episcopal Commission for Social Action (CEAS), and to the Obra Recolectana de Acción Social, a church-based prisoner aid group established by former prison chaplain, Father Hubert Lanssiers, who has been appointed by President Fujimori as a link between the government and the human rights NGOs. The Obra Recolectana de Acción Social, which is administered by Catholic Relief Services (CRS) and has operated for approximately one year, contributes to the cost of providing free legal counsel for people unjustly accused of terrorism.⁷⁷ Between them these four organizations have taken up 1,078 cases since the inception of the program and have obtained the release of 274 prisoners.⁷⁸

In addition USAID has contributed \$50,000 in seed money to the office of the Defensor del Pueblo, which, at the time of writing had recently moved to a four-story office building in downtown Lima, and had a small staff of four or five people.

A. The Lori Berenson Case

In December 1995, the arrest and trial by a military court of a U.S. citizen, twenty-six-year-old Lori Helene Berenson, unexpectedly focused public attention in the U.S. on the issue of the Peruvian faceless courts, with long reports and opinion columns published in major U.S. newspapers.⁷⁹ Berenson was detained on November 30 while returning home by bus after a visit to the Congress. Hours after her arrest, police carried out the raid on the safehouse in La Molina described above. On December 3, Fujimori accused Berenson in a television broadcast of helping MRTA guerrillas by renting them a house in the La Molina neighborhood and supplying them with food. DINCOTE stated that she had repeatedly entered Congress posing as a journalist to gain information the group needed to carry out the kidnappings. During a press conference staged by DINCOTE before her trial, in which she was led on stage in handcuffs and shackles, Berenson defended the MRTA and shouted out her convictions about poverty and injustice in Peru.⁸⁰ On January 11 a faceless military tribunal convicted her to life imprisonment for treason following a summary trial which, like all of those held before faceless courts, lacked the most fundamental guarantees of due process.

Acting Department of State spokesman Glyn Davies stated on that day:

The United States deeply regrets that Ms. Berenson was not tried in an open civilian court with full rights of legal defense, in accordance with international juridical norms...The United States remains concerned that Ms. Berenson receive due process. We have repeatedly expressed these concerns to the Government of Peru. We call upon the Peruvian government to take the necessary steps in the appeals process to accord Ms. Berenson an open judicial proceeding in a civilian court. The United States will continue to follow this case closely.⁸¹

⁷⁷ Human Rights Watch/Americas telephone interview with Jeff Borns, ODIT Chief, U.S. Agency for International Development, Lima, May 31, 1996.

⁷⁸ Official A.I.D. Statistics, undated.

⁷⁹ See for example, Calvin Sims, "In Peru, Un-American Justice," *New York Times*, January 14, 1996; "Peru Mocks Due Process," *New York Times*, January 16, 1996; and Pam Belluck and Calvin Sims, "A Puzzling Path: from P.S. 40 to Prison in Peru," *New York Times*, February 12, 1996.

⁸⁰ Unlike the MRTA members arrested during the raid in La Molina, Berenson was allowed to wear street clothes, rather than a striped prison uniform. According to Berenson's parents, their daughter's strident appearance before television cameras was in part due to the fact that a seriously wounded woman who had been arrested in the shootout in La Molina was placed in her cell and denied medical attention for several days prior to the press conference, leaving Berenson in a desperate rage. (Human Rights Watch/Americas interview, Mark and Rhoda Berenson, Washington, D.C., June 20, 1996.)

⁸¹ U.S. Department of State, Office of the Spokesman, Statement by Glyn Davies, Acting Spokesman, January 11, 1996.
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Berenson lost her appeals within the military court system, and Washington's plea for an open hearing by a civilian court was ignored. In May, President Fujimori was received by President Bill Clinton during a private visit to Washington. During a White House press briefing on May 21 prior to the meeting, Press Secretary Mike McCurry told reporters that "[t]he President will also raise the case of Lori Berenson and ask President Fujimori to reconsider her case and afford her the due process we believe that she is entitled to in a civilian court in Peru."⁸² After the meeting, Fujimori denied that Clinton had asked him to give Berenson a trial by a civilian court:

...(Clinton) did not make any request. He wanted to know about the case, to know the facts and that was what we spoke about...I told him that...Ms Berenson got a fair trial under Peruvian law, which makes no distinction between Peruvian citizens and foreigners in cases of terrorism.⁸³

President Clinton is to be commended for raising the Berenson case during the Fujimori meeting. However, it is not clear whether he simply raised a question, as President Fujimori suggested, or whether he pressed for Berenson's right to a fair trial be satisfied.

B. Recommendations

We urge the Clinton administration to redouble its pressure on the Fujimori government to end the use of faceless courts in Peru, to restore the independence of the judiciary, and to review the cases of all those tried by faceless courts, giving urgent priority to those deemed innocent by local human rights organizations. To that end, Washington should:

- oppose the pending loan at the World Bank for the judiciary and use its influence with other governments to block the loan. World Bank or other international assistance to Peru's judiciary should be conditioned on a restoration of the independence of the judiciary and an end to practices which blatantly violate due process norms;
- sponsor a resolution at the upcoming meeting in Geneva of the U.N. Subcommission for the Prevention of Discrimination and Protection of Minorities to condemn the due process violations associated with the faceless courts and the denial of justice represented by the 1995 amnesty law;
- support the naming of an independent expert by the United Nations Human Rights Commission which meets in Geneva during the first quarter of 1997. The expert's mandate should include monitoring and publicly reporting on Peru's human rights situation.

ACKNOWLEDGMENTS

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⁸² The White House, Office of the Press Secretary, Press Briefing by Mike McCurry, May 21, 1996.

⁸³ Peter Bate, "Inflexibilidad de Fujimori sobre caso Berenson ante Clinton," Reuter, Washington, May 21, 1996. (Human Rights Watch/Americas translation)

WHAT YOU CAN DO

The Fujimori government is concerned about its international human rights image. International pressure on behalf of individual prisoners has in many cases led to their release. In addition, pressure from the international community has been largely responsible for the limited, but beneficial reforms to the faceless court system described in this report. Those wishing to express concern over the injustices perpetrated by the faceless court system or on behalf of individual prisoners should write or telephone the following:

Ambassador Ricardo Luna, Embassy of Peru, 1700 Massachusetts Ave. NW, Washington, D.C., 20036. Phone: 202-833-9860, fax: 659-8124. Please send politely worded appeals to the Peruvian authorities, requesting the following: an end to the use of faceless courts and the trial of civilians in military tribunals; the establishment of a special review board to study the sentences of all those imprisoned under the terrorism and treason laws, giving priority to cases where there are strong indications of innocence; urgent measures to end the use of torture by police and military, with clear and effective mechanisms to prosecute perpetrators. Appeals on behalf of individual prisoners mentioned in this report are also strongly recommended.

To President Clinton: The White House, 1600 Pennsylvania Ave., NW, Washington, D.C. 20506 and Ambassador Jeffrey Davidow, Assistant Secretary of State for Inter-American Affairs, U.S. Department of State, Washington, D.C., 20520: Please send politely worded appeals to President Clinton and Amb. Davidow, urging the administration to redouble its efforts to press Peru to abandon the use of faceless courts and resolve the situation of those unfairly imprisoned or convicted. Urge the President and the State Department to take the lead at the August 1996 session of the United Nations Subcommission for the Prevention of Discrimination and Protection of Minorities in Geneva in sponsoring a resolution condemning the due process violations associated with the faceless courts as well as the denial of justice produced by the June 1995 amnesty law. Urge the administration to also take the lead when the United Nations Human Rights Commission meets in Geneva in the first quarter of 1997 in pressing for the naming of an Independent Expert to examine the human rights situation in Peru.

To Jan Piercy, U.S. Executive Director at the World Bank, World Bank, 1818 H St. NW, Room D13-004, Washington, D.C., 20433; Lionel C. Johnson, Deputy Assistant Secretary for International Development, Debt and Environment Police, Department of the Treasury, Washington, D.C. 20220: Please send politely worded letters to these U.S. officials calling on the administration to use its voice and vote to oppose the loan pending at the World Bank for the judiciary in Peru until the faceless courts are abolished and judicial independence restored.

To Members of Congress (name of Member of Congress, U.S. House of Representatives, Washington, D.C., 20515, or name of Senator, U.S. Senate, Washington, D.C., 20510.) Please send politely worded appeals to your representative and/or Senator to contact the Peruvian authorities and/or the State Department or White House and raise the issues described above.

For more information, contact Anne Manuel at (202) 371-6592, x. 109.

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