

## ACKNOWLEDGMENTS

This report was written by Robin Kirk and Anne Manuel and based, in part, on research conducted in Peru in February 1993 by Kirk. Special thanks are due to the *Asociación Pro Derechos Humanos* (APRODEH), the *Centro de Estudios y Acción por la Paz* (CEAPAZ), the *Comisión Episcopal de Acción Social* (CEAS), the *Comité Nacional de Familiares de Detenidos, Desaparecidos y Refugiados* (COFADER), and the *Instituto de Defensa Legal* (IDL).

Human rights workers in other parts of the country also provided invaluable assistance. However, because of the enormous security risks under which they work, these institutions cannot be mentioned by name. We are only a few of the individuals who owe them a tremendous debt of gratitude.

## I. INTRODUCTION

One year after elected President Alberto Fujimori suspended Peru's Constitution, closed down the congress, took control of the judiciary, and began to rule by decree, Peru's already troubling human rights situation has become significantly worse. Government forces continue to carry out high levels of violent abuses—including extrajudicial executions, disappearances, torture and rape—with little apparent effort to punish those responsible. Two armed insurgent groups, the Shining Path and the weaker Túpac Amaru Revolutionary Movement (MRTA), continue systematically to violate the laws of war relevant to internal armed conflicts, their capacity to sow widespread violence and terror undiminished despite the captures of important leaders by police in 1992. Added to this dismal picture is the creation since April 5, 1992, of a new legal apparatus for the suppression of individual rights at the same time that institutions designed to protect those rights were being weakened or eliminated altogether.

Since last April 5, President Fujimori has used the new powers he granted himself to transform radically the administration of justice in Peru, ostensibly to rid the system of corruption and make it impervious to intimidation by the armed opposition. The widely recognized failure of the courts to administer anything resembling justice in Peru prior to the coup gave Fujimori leeway to undertake what he called reform with considerable popular support. Moreover, a cataclysmic campaign of car bombs, armed strikes, and political assassinations launched by the Shining Path in Lima in the months after the coup created a tremendous popular thirst to see Shining Path suspects punished, never mind such niceties as due process rights.

Yet instead of healing a crippled judicial system, President Fujimori kicked away its crutches. Now the judiciary is, by the president's own admission, entirely dependent on the executive. It has become a tool not just for locking up terrorists, but also for silencing dissent. More rarely than ever does it protect Peruvians from the abuse of power.

A tally by the Lima-based non-governmental Human Rights Commission (COMISEDH) found that forty seven of the first seventy two decrees issued by the new government fired members of previously autonomous institutions, including the judiciary and public ministry, the Central Reserve Bank, and the Comptroller's office. All manner of institutional protections against arbitrary state actions have been removed, including the following:

♦ The dismissal of the Congress has removed a major check on the actions of the executive and the military, enabling the government to unleash a flood of draconian decrees which would not have passed muster in a democratic government. Also lost was the watchdog role played by the Congress, which frequently formed special commissions to investigate notorious human rights violations. For example, a congressional commission investigating the massacre of 15 individuals at a chicken barbecue which occurred in November 1991 saw its work interrupted by the closure of Congress; that work has not been resumed and the crime remains unresolved, despite circumstantial evidence pointing to the involvement of military intelligence agents.<sup>1</sup>

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<sup>1</sup> Máximo San Román, who was Fujimori's vice president until the coup, at which time the disbanded Congress elected him president, in November 1992 revealed an alleged internal military intelligence document outlining how the massacre was carried out, only to be subjected to criminal charges of falsifying documents. And a respected newsmagazine which later provided new information about the case was subjected to a police investigation on the same charges, under orders of the defense minister.

- ♦ the Court of Constitutional Guarantees has been dissolved;
- ♦ dozens of judges and prosecutors—including many known for their integrity and courage—have been arbitrarily dismissed and replaced by regime supporters since April 5. Appeals of the dismissals have been barred;
- ♦ the right to *habeas corpus* and *amparo* have been decreed unavailable for those accused of terrorism or treason until after trial is completed;
- ♦ the government has threatened to take the unprecedented step of denouncing the American Convention on Human Rights, which would remove Peru from the inter-American system of human rights protection and deny Peruvians the right to appeal to the Inter-American Commission of Human Rights and the Inter-American Court;
- ♦ President Fujimori and other members of his government have repeated rhetorical broadsides against human rights organizations, attacks which appear designed to undermine those independent institutions as well.

The practical effects of the elimination or weakening of institutional restraints on the power of the executive are evident in the pages of this report. Among the decrees emitted in the absence of a legislature has been a series of anti-terrorism measures which virtually do away with due process rights for those accused of terrorism and treason, crimes whose definitions have been broadened to encompass peaceful dissent, human rights defense, and investigative reporting.

As a result of these decrees, Peruvian human rights groups believe that hundreds of innocent Peruvians are now jailed, their cases proceeding not based on incriminating evidence but rather on fear on the part of judges and prosecutors that they will lose their jobs if they free anyone accused of terrorism. These detainees face the likelihood of spending decades in prison; their ability to mount a legal defense crippled by the government's new court procedures.

Those terrorism crimes which have been reclassified as "treason" (ranging from serious offenses such as the detonating of car bombs to nonviolent expression, such as teaching in a way that is deemed pro-Shining Path) are tried by hooded judges in secret military tribunals under summary proceedings. Between August 1992 and January 1993, 154 individuals accused of "treason" have been tried in these secret courts martial. Of the accused, 131 have been convicted; 104 sentenced to life imprisonment without parole.<sup>2</sup> Hundreds more face secret trials by "faceless" judges in civilian courts; these trials have proceeded more slowly, leaving those accused languishing for months in prison awaiting trial, as pretrial detention is required in all terrorism cases until a final verdict is rendered.

Among the victims of unfair terrorism and treason prosecutions have been journalists, human rights monitors, environmentalists, academics, peasant organizers, doctors, lawyers, and

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<sup>2</sup> "Condenan a 104 terroristas a cadena perpetua," *La República*, February 11, 1993, using figures from the *Procuraduría Pública del Ministerio del Interior*.

political opponents of the government, as well as individuals who have had minimal contact with guerrillas, or who provided some small collaboration under threat. Many prominent Peruvians have chosen exile rather than face judicial procedures which are stacked against them, including Alberto Borea, the president of the Senate closed by Fujimori, and General Alberto Arciniega, former president of the Supreme Council of Military Justice.

The prosecutions have spread a palpable blanket of fear among those who do human rights work, defend the accused or criticize the government. Several highly-publicized cases—including the detention of human rights monitor José Ramírez García, journalist Magno Sosa and eleven community leaders from San Ignacio, Cajamarca, all released after months in prison awaiting trial—are seen in Peru as exemplary cases, meant to show others what can happen if they insist on working for human rights or press freedoms or other causes out of favor with the government. In other cases, personal disputes have been inflated into terrorism charges, thrusting the accused into a judicial nightmare.

Americas Watch urges the government to repeal the terrorism and treason decrees which violate fundamental rights (see appendix) and establish an independent board of jurists to review the cases of each individual who has been tried by the secret tribunals, both military and civilian. In those cases in which there is evidence of the commission of a crime other than the peaceful expression of views out of favor with the government, new trials should be held that guarantee the accused the right to due process. In cases in which no such incriminating evidence is found, the individuals should be freed.

As other independent institutions have been weakened or eliminated, the National Intelligence Service (SIN)—which has a record of serious human rights abuses—has seen its power grow steadily.<sup>3</sup> Since the coup, the SIN director has been elevated to cabinet rank, and refusal to comply with a SIN request, no matter how unreasonable, has been decreed a crime punishable by a prison term.<sup>4</sup>

In a related matter, General Antonio Ketín Vidal, the respected commander of the National Directorate Against Terrorism (DINCOTE) of the National Police, was in late 1992 transferred, purportedly to reward him for his unit's flawless capture of Shining Path leader Abimael Guzmán on September 12, 1992. The fact that Vidal has been replaced as DINCOTE chief by General Carlos Domínguez Solís of the SIN warrants concern, given the latter agency's well-deserved reputation for favoring repression over detective work.<sup>5</sup> And although Peruvian legislation establishes that the only institution authorized to "prevent, investigate, denounce and combat terrorist subversive activities" is the DINCOTE, several terrorism prosecutions have gone forward based solely on information from the SIN.

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<sup>3</sup> The SIN is the overarching organization of military intelligence. Underneath it operate the intelligence services of each branch of the armed forces, including the army intelligence service (SIE).

<sup>4</sup> See Decree Law 25635 of July 23, 1992. A similar decree was included in a legislative package Fujimori submitted to the Congress in November 1991; it was one of the few to be repealed by the Congress.

<sup>5</sup> Among the recent human rights violations attributed to the military intelligence services SIN and SIE are the November 1991 massacre of 15 participants at a chicken barbecue in the Barrios Altos section of Lima, the illegal detention of journalist Gustavo Gorriti in the first days of the coup, the clandestine detention of businessman Samuel Dyer in July 1992; and the alleged torture of four military officers jailed for plotting to overthrow the Fujimori government.

Lists of alleged Shining Path sympathizers prepared by the SIN and turned over to prosecutors have had devastating consequences for human rights defenders, journalists, academics, popular leaders, and Peruvians residing abroad. A list released in mid-September, dubbed the "Shining Path Ambassadors List," named 67 people who had allegedly pursued pro-Shining Path activities abroad. Many names on the list were well-known Shining Path supporters; others were vocal opponents of the insurgents who had also criticized human rights abuses by the government. As a measure of the absurdity of a good part of the list, among those named was Angélica Mendoza, the president of the Ayacucho-based Families of the Kidnapped, Detained and Disappeared and a well-respected human rights monitor. Mendoza was accused of leading guerrilla activities in France, a country she visited for three days in 1985 as a guest of Nobel Prize winner Adolfo Pérez Esquivel. Despite the absence of incriminating evidence against Mendoza, a warrant has been issued for her arrest, based on the SIN report.

A second list included 190 neighborhood activists and community leaders who allegedly collaborate with the Shining Path. Many of those listed risk their lives every day simply by holding their posts in defiance of explicit death threats from the Shining Path. A few days after the list was disseminated through radio and television news programs, Héctor Medina Bonnet, a Lima shantytown leader, was detained by members of the security forces and is now "disappeared."<sup>6</sup>

Although Fujimori government officials profess in international fora to respect the work of human rights groups, at home they frequently and pointedly refer to human rights groups as guerrilla "facades" or "tools" or "apologists." The government's oft-repeated allegation is that human rights groups do not examine the record of the Shining Path and MRTA, choosing only to stigmatize the government for abuses. For example, after Guzmán, aka Chairman Gonzalo, was captured, President Fujimori, in a speech televised nationwide, appeared to blame human rights groups for years of Shining Path violence:

In twelve years the malevolent genius "Comrade Gonzalo" was able to sow death and destruction beneath the protective mantle of silence of human rights defense organizations. And Peru had to count its dead and bury its dead and remain impotent. More important were the human rights of a terrorist and genocidal band than those of 22 million people.<sup>7</sup>

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<sup>6</sup> Coordinadora Nacional de Derechos Humanos, *Informe Sobre la Situación de los Derechos Humanos en el Perú en 1992*, p. 15.

<sup>7</sup> Message to the Nation, September 14, 1992. To cite a few other recent examples, the Attorney General appointed after the coup, Blanca Nélida de Colán, in a letter to the Foreign Minister, made the ridiculous assertion that the Inter American Commission on Human Rights of the Organization of American States was participating in a campaign by the Shining Path "to present the Peruvian government...as submissive agents in the service of North American imperialism, charged with carrying out the imperialists' plans to end the "Popular War." (*Oficio No. 3135-92-MP-FN*, September 16, 1992.) Also in September, Americas Watch came under attack by the SIN, which sent a report to the Foreign Ministry claiming that Americas Watch "indiscriminately supports Shining Path in the United States." This accusation was used as the basis for recommending prosecution of Carlos Chipoco, a well-known Peruvian human rights attorney who, among his other credentials, had worked for Americas Watch in Washington for a year.

That this accusation is blatantly and demonstrably false with respect to most Peruvian and international human rights groups has been pointed out to the Fujimori government repeatedly, yet officials from the president on down continue to repeat it, provoking misguided popular outrage directed at human rights organizations, some of which have suffered violent reprisals from government forces and the Shining Path because of their evenhanded reporting. Moreover, these declarations undoubtedly help propel groundless criminal accusations against human rights monitors on charges of terrorism, such as the cases outlined in Chapter IV.

The year since the coup has also seen a major effort by the government to regain control of its prisons, where entire cell-blocks were controlled by Shining Path and MRTA inmates. In a crackdown on inmates in the Miguel Castro prison in Canto Grande beginning on May 6, police killed 39 inmates in a pitched battle in which three policemen were also slain. Despite considerable evidence that excessive force was used and that some inmates were executed after their surrender, the government has neither provided a full public explanation of the incident nor taken steps to investigate and punish those responsible for the grave abuses.<sup>8</sup> Afterwards the government imposed tight controls over those inmates, some of which clearly violate United Nations standards on the treatment of prisoners, such as the denial of access to reading materials, severely restricted food intake, and inadequate medical attention. And beginning in July, the government began imposing new conditions on the humanitarian program of prison visits run by the International Committee of the Red Cross (ICRC), resulting in a suspension of the program until a new agreement was reached, under heavy international pressure, in March 1993.

International pressure on Peru to respect human rights and reestablish democratic government has been applied inconsistently, but has nonetheless shown some results. Elections for an assembly to draft a new constitution and act as interim legislature (called the Democratic Constituent Congress or DCC) were held on November 22, 1992. Yet the elections clearly produced a body far more docile towards the executive than the one Fujimori shut down on April 5. This result was largely the fruit of labors of the Organization of American States (OAS), which took it upon itself, in a quickly organized ad hoc meeting of foreign ministers on April 13, to "support the reestablishment of democracy in Peru."

The elections would most likely not have been held, were it not for OAS pressure. Yet the OAS failed in its mission to bring about a genuine restoration of democracy—one which actually reestablished a balance of powers between the executive, the legislative, and the judicial branches of government. The terms of the elections, which were to have been decided by an OAS-sponsored dialogue between the government and its opposition (including the deposed lawmakers), were dictated unilaterally by Fujimori himself after the dialogue reached an impasse. As a result, the largest political parties refused to participate in what they saw as a sham election, which the OAS had given its blessing to. President Fujimori's New Majority—Cambio 90 won 44 of 80 seats, establishing a clear majority. The Popular Christian Party (PPC) came in second, with eight seats. Even so, Fujimori has suggested he might close down the new Congress if its actions do not please him.

Concerns that the DCC would act as a rubber stamp for the executive have not been allayed by its initial actions. On its first day of work, the Congress ruled that all the decrees promulgated by

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<sup>8</sup> See Americas Watch, "Peru: Civil Society and Democracy Under Fire," (New York: August 1992). pp. 8-12.

the government since the coup were in force, unless they were derogated by the new congress. It also recognized President Fujimori as the "constitutional chief of state," despite his abrogation of the constitution on April 5. And on February 22, in light of negotiations between the Fujimori and Clinton governments over human rights and financial assistance, the congress approved a motion stating, in part:

That in Peru there is no systematic and organized policy of the state which perpetuates human rights violations, as has occurred in other nations;

That it is the duty of all Peruvians to defend the international image of Peru in the face of statements which in general are not accurate... (*Americas Watch translation.*)

The motion also stated the DCC's willingness to investigate human rights violations. Nonetheless, on-going investigations by the former congress into cases of human rights violations were suspended on April 5 and have not been resumed.

After a delay of three months imposed by Fujimori, municipal elections were held on January 29, in the midst of a vicious Shining Path campaign to disrupt them. More than a dozen candidates for municipal office were murdered by the insurgents in the days before the elections, including Humberto Pantigoso of Villa el Salvador, killed with his wife in front of several of their eleven children.

While OAS pressure has diminished, the newly inaugurated Clinton administration in Washington appears determined to make human rights the most important element in bilateral relations with Peru, in contrast with the Bush administration's policy, in which human rights often took a back seat to anti-narcotics objectives. The Clinton administration has made clear it will link balance of payments support to Peru to human rights and democracy issues.

In response, the Peruvian government announced several steps aimed at improving the human rights situation in February 1993. Following several days of negotiations between the Clinton Administration and visiting Peruvian officials, the U.S. agreed to provide a bridge loan to Peru and convene a meeting of foreign donors, after the Peruvian government agreed to take the following steps: restore unrestricted prison access to the ICRC; invite the Inter-American Commission of Human Rights to visit Peru and examine the human rights situation; seek what are called "advisory services" on human rights from the United Nations Human Rights Commission; hold regular meetings of cabinet-level officials with the *Coordinadora Nacional de Derechos Humanos*, a respected umbrella-group of Peruvian human rights groups; and make a public statement expressing respect for the work of international human rights groups such as Amnesty International and Americas Watch.

Prime Minister Oscar de la Puente Raygada publicly committed to several of these points in a speech before the UN Human Rights Commission in Geneva on February 22, 1993, as well as announcing that international humanitarian organizations in general would henceforth have "free access" to Peru's detention facilities to verify the treatment of detainees. An Americas Watch representative was in Peru at the time, and had for eight days been requesting official authorization to visit the newly constructed Yanamayo maximum security prison in Puno, where conditions have been reported to be inhumane. On February 24, the Peruvian Embassy in Washington, D.C. informed Americas Watch that because the government was adopting a new policy of free access to prisons, it could *not* allow Americas Watch to visit the Puno prison until

certain unspecified "mechanisms" were established. A March 25 request by Americas Watch to visit this and other prisons in late-April was also discouraged by the embassy, on the grounds that mechanisms could not be established that quickly. These episodes raise serious questions about the government's commitment to carrying out the promises it makes outside the country; Americas Watch fears that an improvement in the art of public relations may be substituting for a improvement in human rights practices.

In another international forum, the Inter-American Court of Human Rights, a judicial arm of the OAS which adjudicates violations of the American Convention on Human Rights, declined jurisdiction over the case involving the May 1988 massacre of 28 peasants and subsequent disappearance of nine witnesses in Cayara on procedural grounds. The Inter-American Commission on Human Rights, which acts as a prosecutor before the court, will now publish its report on the Cayara case—which holds the government responsible for grave violations of the American Convention—as an annex to the annual report of the commission and will take the case to the OAS General Assembly for consideration. The General Assembly will meet in Managua in June 1993. This will mark the first time in many years that the General Assembly will have on its agenda a request to take measures against a member state for human rights violations, although this occurred frequently in the 1970s. Americas Watch will press the General Assembly and the participating governments to discuss the case and to insist publicly that the government of Peru seriously investigate the case, punish those responsible, and provide damage awards to the victims.

At the same time, the trial of the government of Peru for the disappearance of prisoners at the El Frontón penitentiary during prison riots in June 1986 will begin at the Inter-American Court in July. Americas Watch is a petitioner in the case, along with several other human rights groups. We are hopeful that the Inter-American Court will provide the relatives of the victims of El Frontón the elements of judicial redress they have been denied in Peru.

The year since the coup of April 5, 1992, has been one in which Americas Watch has expended extraordinary resources in monitoring the human rights situation in Peru. We sent missions to Peru in March, May and July 1992 and February 1993. The May mission included prominent human rights monitors from Mexico, Brazil, and Colombia, as well as Americas Watch, to reflect the interest throughout the continent in the situation after the coup and the future of human rights in Peru. We produced two short reports on the human rights situation in August 1992, one of them written jointly with Mariclaire Acosta, President of the *Comisión Mexicana de Promoción y Defensa de los Derechos Humanos*; Paulo Sérgio Pinheiro, Director of the *Núcleo de Estudos da Violência* of the University of Sao Paulo; and Gustavo Gallón, director of the Andean Commission of Jurists' Colombian section. And in December 1992, Americas Watch and the Women's Rights Project (both divisions of Human Rights Watch) published a book-length report on violence against women in the course of the armed conflict in Peru. Each of these reports was made available in Spanish. And on December 10, 1992, in honor of International Human Rights Day, we honored posthumously María Elena Moyano for her tremendous courage and dedication to women's rights and human rights in general at our annual event to honor human rights monitors around the world. Her principled and steadfast opposition to Shining Path violence against civilians led to her assassination by a Shining Path hit squad in Villa el Salvador on February 15, 1992. Moyano's absence at the ceremony in New York City was symbolized by an empty chair.





## II. VIOLENT ABUSES BY STATE AGENTS

Violent human rights abuses by government forces continue at roughly the same level of intensity as in previous years. In 1992, the *Coordinadora Nacional de Derechos Humanos* registered 178 unresolved "disappearances." An additional 50 people who had "disappeared" were later found murdered and 58 were freed or transferred to the proper authorities. This compares to a 1991 figure of 301 unresolved disappearances. Peru's Public Ministry, which maintains more complete statistics, registered a total of 242 disappearances in 1992. The discrepancy stems in part from the fact that human rights groups have been unable to extract regular information from the department of Huánuco, where the Public Ministry reported 120 disappearances in 1992.

The most affected areas, according to the statistics of the Coordinadora, continued to be the departments of Junín, with 86 disappearances, Ayacucho, with 76 disappearances and San Martín, with 52 disappearances. Ninety per cent of the disappearances were traced to the armed forces, according to the Coordinadora.

A comparison by the Coordinadora of disappearances in the first 20 months of Fujimori's government with the same period in the previous government of Alán García Pérez, revealed a dramatic worsening of the problem, with 500 confirmed cases of disappearances in Fujimori's first 29 months compared with 283 during the same period in García's administration. Another 50 people who had disappeared were found dead during the Fujimori government, compared with 12 under García.<sup>9</sup>

And despite the government's pledges in international fora to address seriously the problem, at home their statements often belie a lack of will. Referring to the disappeared, Prime Minister De la Puente told listeners to the "Saturday Focus" radio program in Lima, "I'm sure over 90 percent of the 4,300 people reported missing are freely walking around Lima with another set of identification papers and forged electoral cards, or they are part of the terrorist organizations."<sup>10</sup>

The Coordinadora's figures show an increase in extrajudicial executions (all of which are attributable to government forces) in 1992, registering 114 extrajudicial executions compared with 99 in 1991. An additional nine people were killed by soldiers for violating the nighttime curfew established in Lima and Callao in the wake of a Shining Path car bomb campaign following the coup, according to CEPAZ. None of the victims of curfew shootings had any known connection to guerrilla groups, according to the Coordinadora, nor have any of their killings been investigated.

The overall death toll as a result of political violence reached 2,756 people in 1992, according to the Coordinadora. About 60 per cent were killed in armed clashes while 30 per cent were murdered in cold blood. (Information on violations by the Shining Path are in Chapter III.)

In addition, the Coordinadora documented 70 cases of torture, none of which have been investigated by judicial authorities. The practice of torture in Peru received unprecedented

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<sup>9</sup> The periods examined were August 1, 1985–December 31, 1987, compared with August 1, 1990–December 31, 1992.

<sup>10</sup> "De Puente on Economy, Foreign Policy," *Lima, Radio Programas del Peru*, reprinted in Foreign Broadcast Information Service (FBIS) Latin America Daily Report, January 11, 1993, p. 46. Mr. De Puente was referring to the total number of unresolved disappearances estimated to have taken place since the beginning of the war with Shining Path in 1980.

public attention after four army officers jailed for plotting a coup against Fujimori in November sent to the press detailed descriptions of the torture they suffered. According to their handwritten testimonies, Lieutenant Colonel Enrique Aguilar del Alcázar, retired Major Salvador Carmona Bernasconi, Colonel Marco Zárate Rotta, and Major César Cáceres Haro were each tortured in the headquarters of the SIN and coerced into implicating opposition political and military figures in the coup plot. Each of the four alleged that presidential advisor Vladimiro Montesinos, the de facto chief of the SIN, participated in their torture.

Prosecutor Flor de María Mayta was assigned to investigate the torture allegations, which she declared to have no merit. However, her investigation did not include interviewing the victims, and was based largely on medical examinations performed at least a week after the torture allegedly took place.

The available figures on human rights violations most likely underestimate the true level. The Coordinadora reports that the April 5 coup created huge obstacles to the work of collecting reliable human rights information. Especially in the parts of the country declared under state of emergency, currently an estimated 25 per cent of the national territory, the work of the church, human rights monitors, journalists and even government investigators was severely hampered, either by the effects of the post-coup judicial reorganization or persecution and threats.<sup>11</sup>

There is a widespread perception in Peru that political violence in the course of counterinsurgency operations has become more selective; that enhanced intelligence, in part because of information provided by civil defense patrols organized by the army, has enabled the army to zero in more effectively on guerrilla suspects. The systematic use of selective repression was on display in two army operations at major universities in 1992.

The morning of August 7, 1992, soldiers who had occupied the *Universidad Nacional del Centro del Perú* in Huancayo since the end of 1991 ordered the students and faculty to line up for a census. One by one, the professors and students presented their documents for revision while the soldiers took their photographs. One of the soldiers approached **Héctor Riveros Izarra**, an agronomy student and leader of a student group reportedly controlled by the Shining Path.<sup>12</sup> Riveros was taken from the line, forced into a military vehicle, and driven away. Although his relatives went to the army base looking for Riveros, they were denied information. Nor did his name appear on a list of detainees which the army made public the next day. Riveros remained disappeared for twenty-eight days, until October 15, when he presented himself to the Human Rights Prosecutor in Huancayo, saying he had sought military protection because he had been threatened with death.

In the months of August and September, 25 other student activists from the university "disappeared," nineteen of them later found dead, some with signs of torture. The military and police denied having detained the victims, although there were witnesses to the captures in many of the cases who identified those responsible as the army or police. Instead, the authorities suggested the victims had been killed as part of a dispute for

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<sup>11</sup> "Informe sobre la situación de los derechos humanos en el Perú en 1992," *Coordinadora Nacional de Derechos Humanos*, Lima 1992.

<sup>12</sup> Mónica Vecco, "Aparece el Primer Estudiante Secuestrado," *La República*, October 17, 1992.

territory between Shining Path and the MRTA.<sup>13</sup>

Those dead have been identified as: **Miriam Lidia Navarro Concha, Zózima Curasma Sulla, Justiniano Fredy Vicente Rivera, Flor Salvatierra Soto, Petre Cosme Ureta, Edgar Granado Gómez, Rolando Ricse Colonio, Roberto Santiago Bravo, Luis Alberto Tocas Villanueva, Juana Nahui Vilcas, Luis Aníbal Naupari Toralva, Alejandro Tunque Lizama, Eugenio Curasma Sulla, María Sánchez Retamozo, Edwin Ramos Calderón, Gladys Espinoza León, Fernando Saenz Munarris, Hugo Puente Vega, and Peter David Cosme Ureta.**

Still disappeared are: **Edgar Chaguay Quispe, Augusto Galindo Peña, Elizabeth Mendoza Choque, Cori Tenicela Tello, and Javier Gómez Gaspar.** One of the disappeared, **Angel Cieza Galván,** reportedly appeared alive on October 8, 1992.<sup>14</sup>

On October 20, the Attorney General designated a special prosecutor, Imelda de Tumialán Pinto, to investigate the crimes. In a summary of her report on the disappeared students provided by the Peruvian Embassy in Washington in March 1993, Tumialán confirmed that Miriam Lidia Navarro Concha, Sósimo Curasma Sulla, and Justiniano Vicente Rivera were found dead with signs of torture. She added that one of the disappeared students, Angel Cieza Galván, had reappeared alive on October 8, seeking protection. She reported that her investigation would continue to search for those still disappeared.

In two separate incidents in February 1993, Huancayo university students **Rony Guerra Blancas** and **Milagro Flor Túpac Gonzales** were abducted from their residences and disappeared. Both had recently been elected as student representatives to the university's 1993 admissions commission. Guerra Blancas, an anthropology student, was last seen in the custody of a group of armed men with ski masks, dressed in military garb, who had him handcuffed in his home at around midnight on February 11.<sup>15</sup> Túpac Gonzales, a student of social work, was taken from her home by approximately ten men in civilian dress wearing ski masks. The men put her in a Chevrolet truck, which a witness identified as the same one that soldiers use to shop at the Modelo market.<sup>16</sup> The relatives of the students sought information as to their detention at the National Police headquarters in Huancayo, the "9th of December" military barracks and the precinct of the local anti-terrorism police (*Jefatura contra el Terrorismo*, JECOTE). In each place, the authorities denied holding the youths.<sup>17</sup>

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<sup>13</sup> "Hay guerra entre Sendero y el MRTA," *La República*, October 18, 1992.

<sup>14</sup> This account is drawn from Centro de Estudios y Acción para la Paz (CEAPAZ), "Informe Sobre Presuntas Violaciones a Los Derechos Humanos en el Departamento de Junín, Peru. Desapariciones y Ejecuciones Perpetradas Después del Golpe de Estado," October 14, 1992; "Informe Actualizado de Violaciones a Los Derechos Humanos en el Departamento de Junín Luego del Golpe de Estado del Presidente Fujimori," October 20, 1992; and a series of articles published in *La República* in October 1992 entitled "Guerra sucia en Huancayo?"

<sup>15</sup> *Denuncia de Detención Desaparición*, Rodrigo Guerra Alderete and Diana Blancas de Guerra, to the *Fiscalía provincial Especial de Defensoría del Pueblo y Derechos Humanos del Distrito Judicial de Junín*, February 15, 1993.

<sup>16</sup> *Acta de denuncia*, Francisco Túpac Gonzales, to the *Fiscalía provincial Especial de Defensoría del Pueblo y Derechos Humanos del Distrito Judicial de Junín*, February 12, 1993.

<sup>17</sup> Letter from CEAPAZ, March 16, 1993.

The army occupied Lima's Enrique Guzmán y Valle University (widely known as "La Cantuta") in much the same way as it did the university in Huancayo. After setting up a permanent base in May 1991, soldiers began to patrol the campus and frequently stopped students to ask for documents.

On July 18, nine students and a professor were abducted. The students were taken from a university residence hall, while Professor **Hugo Muñoz Sánchez** was detained at his home in front of his family.<sup>18</sup> Witnesses say that at both locations, the men were masked and wore military-style clothing. They were apparently working from a list of names. One of the officers in charge of detaining the students was identified as a Lieutenant Merino, assigned to the base at the university.<sup>19</sup>

Antonia Pérez Velásquez, wife of Muñoz Sánchez, says soldiers forced her to remain in her house after taking away her husband. The day before, she says, her husband had asked soldiers to leave an open meeting where professors and students were debating university politics. In response, soldiers had cocked their guns in a threatening manner.<sup>20</sup>

A writ of *habeas corpus* was filed on their behalf, but declared unfounded by the courts on August 27. However, in his decision, Judge Cayo Rivera Vásquez noted that officers called to testify openly contradicted each other about whether or not there had been an army action that day. While General Pablo Carmona, the chief aide to the general in charge of the Second Military region, which includes Lima, denied that there had been any military activity, General Nicolás de Bari Hermoza, Chief of the Joint Command and head of the army, testified that there had been a "sweep-style" operation, but that no one had been detained. However, the army refused to identify the officers in charge that day "for security reasons," and falsely alleged that some of the disappeared had reappeared recently in Huancayo.<sup>21</sup>

Three months later, three more La Cantuta students were temporarily disappeared. In each case, the authorities responsible for the detention denied having the victim in their custody. **Nelson Echegaray** was released hours later from the Las Palmas army base in Lima. **María Magdalena Monteza** was passed to DINCOTE.

The third student was **Nancy Pimentel Cuellar**, 26, who studies education.

On October 10, Pimentel was detained at her Chosica home by eight heavily armed members of the security forces who were masked and dressed in civilian clothes. After

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<sup>18</sup> In addition to Muñoz Sánchez, students **Bertila Lozano Torres**, **Dora Olague Fierro**, **Roberto Teodoro Espinoza**, **Marcelino Rosales Cárdenas**, **Juan Mariño Figueroa**, **Felipe Flores Chipana**, **Luis Enrique Ortiz Perea**, **Armando Amaru Cóndor** and **Heráclides Pablo Meza** were abducted.

<sup>19</sup> "Aparecen dos estudiantes de La Cantuta" *Expreso*, November 1, 1992.

<sup>20</sup> APRODEH interview with Antonia Pérez Velásquez.

<sup>21</sup> See Expediente Nr. 435—92—, Secr. Granda, January 8, 1993.

forcing their way in, they killed the family dog with pistols equipped with silencers and forced Pimentel's husband, three-year-old son, and 76-year-old grandmother to the floor as they shouted for Pimentel to produce weapons and Shining Path literature. After beating her severely and stealing money, they forced her onto a car, blindfolded and bound.<sup>22</sup>

When the car stopped, Pimentel says she was told that she was in DINCOTE. Her captors made her sit in a chair and not move, saying it was at the edge of a precipice. She remained there all night and through another day. She was not allowed to go to the bathroom and was given nothing to eat.

At midnight, her interrogation began. Although she denied involvement in the Shining Path, her captors took her to another room, tied a rope around her neck and applied electric shocks to her fingers and head until she fainted. They forced her head into a pail of soapy water until she again lost consciousness. When she woke, she was shivering with cold on a cement floor.

For several days, she was kept without food, sleeping on the floor with no mattress or blanket. Along with another woman, she was finally switched to a cell with a mattress on the floor. The woman, whose name she was afraid to ask for fear she would be overheard and beaten, claimed that she too had been tortured.

Pimentel says after 20 days with little to drink and only a plate of beans to eat, she was questioned by another man who identified himself as a member of DINCOTE. He told her she had to repeat her story "because I don't know what you told the others." However, Pimentel had heard the morning roll call for the Army base, martial music and the shouts of soldiers doing calisthenics.<sup>23</sup>

She was released on November 2 in much the same way she had been kidnapped. Blindfolded and bound, she was forced into a car and driven for about an hour. Suddenly, the car stopped and she was told to get out. She later told a *Caretas* reporter that she thought she was about to be executed. When she took her blindfold off, though, she realized she was in the Lima municipality of Miraflores.

Throughout Pimentel's disappearance, the army and DINCOTE told her family they had no knowledge of her whereabouts. A writ of habeas corpus was rejected by the courts on November 11—a week after her miraculous release—on the grounds that there were no "reasonable indications" that she had been detained by either the police or the military.<sup>24</sup>

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<sup>22</sup> See Public Ministry complaint of her disappearance by her husband on October 13, 1992; and APRODEH complaint on October 14, 1992. Also, "Desaparición Forzosa y Tortura de una Estudiante de 'La Cantuta'" by Amnesty International, AMR 46/59/92/s, December 1992.

<sup>23</sup> "Vivir para contarlo," *Caretas*, November 12, 1992, pp 34-36.

<sup>24</sup> See APRODEH complaint No. 55—92, October 26, 1992, and judicial notification from the Penal Court dated November 11, 1992.

For some families, the disappearance of one member—and the inherent implication of involvement in guerrilla activity—puts the rest of the family at risk of arrest.

**Cruz Velásquez**, from Santa, Ancash, had two sons, **Roberto** and **Carlos Barrientos Velásquez**, who disappeared on May 2, 1992. On November 17, a daughter, **Maribel**, was arrested and charged under the treason law. On January 21, 1993, a third son, **Edwin**, was also arrested and charged with treason. Now, Velásquez supports ten grandchildren on the salary of her one remaining daughter and a daughter-in-law.<sup>25</sup>

Paramilitary groups, which are believed to have ties to military intelligence and the police, continue to be active in some areas. These groups are believed responsible for a string of killings and disappearances in the northern Lima province of Huaura, including the detention and murder of seven men from the villages of Caraqueño and Pampa San José, near Pativilca, on January 29, 1992, and the massacre of five people in the home of **Gualberto Rodríguez Páucar** in Huaura on January 23, 1992.<sup>26</sup>

A similar case was the slaying of six members of one family in the village of Santa Ana, near Santa María, Huaura. At 3:00 a.m. on June 24, 1992, about 15 men dressed in military-style clothing grabbed **Marino Ventocilla** from his home, along with his brother, **Rafael**, his brother's children **Alejandro**, **Simón**, and **Paulino**, and Rafael's 17-year-old grandson, **Rubén**.

The next day, the six bodies were found in a shallow grave covered with lime near the Huaura-Sayan highway, all with signs of having been tortured before being executed. A formal report to the Public Ministry was made by Catalina Castillo León, Rafael Ventocilla's wife, a witness to the kidnapping, on August 11. Although she says she reported the crime immediately to two separate police stations, they refused to help her.

Rafael Ventocilla was a member of the Popular Action party and the former mayor of Cochamarca, Lima. At the time of his death, he ran a farm with his son Paulino. Alejandro and Simón were teachers and members of UNIR, part of the United Left political party. All had been arrested once before, on April 25, by soldiers from the Atahuampa military base, and had been held for 24 hours. During the interrogation, they had been accused of being "destroyers" and "terrorists." However, no formal charges were filed.

Agripino Ventocilla, a son who by chance was not present the night of the kidnapping, believes the incident is related to a dispute within his extended family which has resulted in an accusation of terrorism against his father and uncle.<sup>27</sup>

The day before the Ventocilla family members were kidnapped, armed men broke into the home of **Pedro Yauri Bustamante**, a journalist who worked in Huaura. The men identified themselves as members of DINCOTE. The next morning, neither the local police station nor the office of the Technical Police would accept from Yauri's father a formal complaint denouncing

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<sup>25</sup> Interview in Lima on February 17, 1993.

<sup>26</sup> Americas Watch, "Peru: Civil Society and Democracy Under Fire," p. 22.

<sup>27</sup> APRODEH interview with Agripino Ventocilla.

his son's detention.

A judge later declared a writ of habeas corpus unfounded. Yauri's whereabouts remain unknown.



### III. VIOLATIONS OF THE LAWS OF WAR BY INSURGENTS

Both the Shining Path and the MRTA systematically violate the laws of war governing internal armed conflicts through torture and murder of noncombatants, indiscriminate attacks, and, in the case of the MRTA, hostage-taking.<sup>28</sup> The capture by the authorities in the latter months of 1992 of dozens of the highest leaders of both groups failed to curb their violence for more than a few weeks.

Of the two groups, Shining Path stands out for its glorification of violence. Shining Path literature rejects as bourgeois the concept of individual rights and embraces violence as ideologically purifying: those assassinated are often described as guilty of carrying out "black" tasks. A recent issue of the party's clandestine newspaper, *El Diario*, sports a drawing of guerrillas assaulting a building—with inhabitants falling from the flaming windows—above the caption "Learn to die!"

Shining Path cadre routinely threaten and assassinate civilians deemed ideological enemies: grassroots leaders, community activists, government officials, trade union organizers, leftist politicians, journalists, and others. The Coordinadora Nacional de Derechos Humanos held the Shining Path responsible for 946 political assassinations in 1992, compared with 842 in 1991. Among the victims of Shining Path assassinations in 1992 were 29 neighborhood leaders, 28 peasant activists, ten political leaders, and 8 trade union organizers.

Rather than making alliances with other groups and individuals which oppose the government, Shining Path seeks to sweep aside independent organizations, leaving the population with no choice besides the army or the Shining Path.<sup>29</sup> Thus among its recent victims were **Pedro Huilca Tecse**, the Secretary General of the largest trade union federation, the General Confederation of Workers of Peru (CGTP), shot dead on December 18, 1992, by a team of assailants the day after leading a protest against the government's economic policies. Shining Path has continued to target for assassination women who lead "survival" organizations, such as **Bernardina Maldonado Quispe**, an organizer for the Glass of Milk program in the Lima shantytown of El Agostino, shot dead on July 21, 1992.<sup>30</sup> The November 1992 issue of *El Diario*

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<sup>28</sup> Since our first report on human rights in Peru in 1984, Americas Watch has reported on violations of the laws of war by the armed opposition as well as government forces. The standards set forth in Common Article 3 of the four Geneva Conventions of 1949 explicitly address conflicts that are not of an international character. Americas Watch applies these standards 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 to life and person, in particular murder, mutilation, torture; humiliating or degrading treatment; the passing of sentences and carrying out of executions without previous judgment pronounced 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.

<sup>29</sup> See Americas Watch, "Peru: Civil Society and Democracy Under Fire," pp. 24-32.

<sup>30</sup> The systematic targeting of women who organize survival groups in poor neighborhoods by Shining Path is described in detail in Americas Watch and the Women's Rights Project, *Untold Terror: Violence Against Women in Peru's Armed Conflict*, (New York: December 1992), pp. 46-58.

claimed credit for her murder, saying that Maldonado was an informer who "cynically stole the food that belonged to the masses."<sup>31</sup> Church and human rights groups have also come under fire: on October 1, 1992, a Shining Path contingent killed Italian lay missionary Giuliani Rocca Oriana in the Jangas community of Ancash department. Rocca's crime, according to *El Diario*, was to have "carried out the black task of infiltration among the popular masses with the pretext of helping them, as faithful servant of yankee imperialism and the forces of reaction." On October 7, 1992, guerrillas detonated a bomb which destroyed the church human rights office—the *Vicaría de la Solidaridad* of **Ayaviri**, in the department of Puno. A Shining Path leaflet distributed in Puno around the time of the explosion vowed to "crush overwhelmingly" those who "raise the blackened flags of the so-called HUMAN RIGHTS, revisionists and sustainers of the old State..."

These explanations published by the Shining Path to justify its assassinations and bombings never provide any evidence of the offenses they claim their victims carried out. They are a form of character assassination following physical assassination, designed to discredit their victims even after they have been physically eliminated. Even if these accusations were true, they would not change the victims' status as non-combatants and therefore illegitimate targets for attack under the laws of war.

Over the course of the war, the Shining Path has systematically assassinated local government officials in conflictive zones. That pattern continues. For example, on October 8, 1992, a Shining Path contingent killed the authorities of the district of Palca, in the province of Lampa, Puno department. Killed were: **Reynaldo Valentín Mamani**, governor of the district of Palca, **Esteban Vilca Mamani**, mayor of the district council of Palca, **Aurelio Ccama Cutipa**, councilman (*regidor*), **Felipe Santiago Mamani Potosino**, secretary, and **Simón Miguel Vilca Mamani**, teacher. The assassination of civilian government authorities is a clear violation of international humanitarian law, as these authorities cannot be considered combatants.<sup>32</sup>

Shining Path also engaged in a widening campaign of car bombs after the coup, using cars and trucks packed with up to 600 kilograms of dynamite mixed with ammonium nitrate, or anfo. In April and May, these detonations were for the most part targeted at police precincts, although many civilians were also injured or killed; however, in June and July, they began to be directed against purely civilian targets, with a clear terroristic intent. Just one incident at the intersection of Tarata and Alcanfores streets in the Miraflores district of Lima killed at least 18 civilians and left hundreds seriously wounded. According to the Coordinadora, Shining Path explosives killed more than 60 civilians during the car bomb campaign between May and July.

Car bomb detonations have continued despite the September 1992 capture of Guzmán and other Shining Path leaders and despite the criminalization of possession and storage of anfo after the Tarata street bomb and imposition of life imprisonment for infractions. In late 1992 and early 1993, car bombs were exploded outside the Chinese and Japanese embassies, the headquarters of IBM, Coca Cola, and the air force recruitment office. The latter, a 100 kilogram car bomb, was detonated as a group of young men were lining up to join the air force. Two youths died in the

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<sup>31</sup> *El Diario*, November 1992, p.2.

<sup>32</sup> See discussion of executions of mayors in El Salvador by the FMLN in the United Nations report *De la Locura a la Esperanza: La guerra de 12 años en El Salvador*, report of the Truth Commission for El Salvador, pp. 156-160.

blast and forty were seriously wounded, one of them later dying of his wounds.<sup>33</sup>

A Shining Path unit massacred 47 members of the peasant community of Huayao on October 10, 1992, apparently in retribution for its formation of a civil defense group. The dead included 15 children. According to news reports and an account by COMISEDH, the nighttime attack took the community completely by surprise. Insurgents entered houses and killed inhabitants, others were shot while attempting to flee. A few were taken from their houses to the school premises where they were assassinated. The guerrillas also burned and looted homes and stores. This attack clearly violated the laws of war. While armed militiamen may be considered legitimate targets while on duty, attacks on those placed *hors de combat* by their surrender or injury are strictly prohibited. Moreover, the slaying of defenseless people and children, and the burning and looting of homes, are clear and flagrant breaches of the laws of war.

The MRTA—which has yet to recover from an ever deepening internal crisis—was responsible for 18 political assassinations in 1992, according to the Coordinadora. On February 24, 1993, the MRTA shot dead businessman David Ballón Vera, whom they had kidnapped and held for ransom for the previous five months. According to the DINCOTE, the guerrillas killed Ballón when his family failed to pay \$5 million in ransom. The body was covered with bruises and weighed 35 kilos less than before his capture.<sup>34</sup>

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<sup>33</sup> "Sendero Luminoso y MRTA: Crueldad sin limites," *ideele*, [Lima: Institute for Legal Defense], Number 48, Año 5, (March 1993), p. 15.

<sup>34</sup> "Asesinan a Empresario Secuestrado," *La República*, February 25, 1993.



## IV. THE POLITICIZATION OF JUSTICE

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.

In what was termed "reorganization," President Fujimori closed down the entire judicial system on April 5, later allowing the judges and prosecutors who had been on duty at the time of the coup to resume minimal judicial functions. In the first weeks after the coup, the military emptied out the judicial files in the Palace of Justice into pickup trucks, taking them to an unknown destination. Normal judicial activity was largely suspended for at least a month. Those attempting to present writs of habeas corpus for the dozens of individuals detained in the coup were turned away from the courthouses by soldiers; in the case of Pilar Nores de García, wife of former president Alan García Pérez, tear gas was thrown to frustrate her effort.

Massive firings of judges and prosecutors have been carried out continuously with no right to appeal. In many cases, dismissal has clearly been political: in the case of Ricardo Chúmbez Paz, dismissal came soon after he became the first judge to accept a habeas corpus petition after the coup. In the case of General Alberto Arciniega, fired from his position as president of the Supreme Council of Military Justice in December 1992, it was the light sentence given a colonel accused of embezzlement which cost him his job.<sup>35</sup>

Fujimori has frequently made public statements about the guilt or innocence of individuals on trial before a verdict has been rendered, in some cases even declaring what the sentence should be. In the case of **Abimael Guzmán**, the outcome of the trial was prejudiced by Fujimori's repeated statements that Guzmán would be found guilty, sentenced to life in prison, and that his appeals would fail. In the case of businessman **Samuel Dyer**, who was illegally detained by the SIN and subsequently placed under judicial investigation for tax evasion and drug trafficking, Fujimori publicly defended the intelligence service's actions by denouncing Dyer as a drug trafficker.<sup>36</sup>

In this new climate, prosecutors and judges must consider not only the merits of each case before them, but also the potential impact on their careers if they fail to prosecute the accused, especially when the charges are politically sensitive ones, such as terrorism or treason. The establishment of new court procedures and new definitions of terrorist offenses has opened the door wider to the abuse of power.

### A. Terrorism and Treason Decrees

The first of a string of anti-terrorism laws issued by the de facto government was Decree Law 25475, promulgated on May 6, 1992. (See appendix for a chronology of decrees affecting human rights since the coup.) This law institutes heavy penalties for crimes defined as terrorism, including leading terrorist groups or forming part of an armed group or providing support services. However, it also criminalizes such nonviolent acts as "provoking anxiety," "affecting

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<sup>35</sup> See "Fujimori Interviewed on Current Issues," *Radio Programas del Perú*, January 2, 1993, reprinted in FBIS Latin America Daily Report, January 5, 1993, p. 24.

<sup>36</sup> "Fujimori Interviewed on Coup Attempt, Other Issues," *Frecuencia 2 Satelite Televisión*, November 15, 1992, reprinted in FBIS Latin America Daily Report, November 17, 1992, p. 26.

international relations" or seeming to favor or excuse the behavior of suspected guerrillas, called *apología del terrorismo*. The criminalization of such non-violent acts is a clear violation of freedom of expression.

Equally troubling are the new procedures established for trying terrorism cases, including the following:

- ◆ Those accused of terrorism are tried in closed hearings by prosecutors and judges whose identities are secret ("faceless courts").
- ◆ Defense attorneys are barred from representing more than one client accused of terrorism simultaneously nationwide.
- ◆ Police may hold terrorism defendants for 30 days incommunicado.<sup>37</sup> Defendants are only granted access to counsel at the time that they render their statement after the incommunicado police detention is over.
- ◆ All defendants accused of terrorism must be detained until a final verdict is rendered in their case. A subsequent decree established that the right to habeas corpus and *amparo* are suspended for those accused of terrorism or treason until trial is completed.

Moreover, police routinely present those accused of terrorism to the press in black and white striped prison uniforms, giving the impression of guilt before they have been tried.

Since its enactment, Decree Law 25475 has been used to threaten and imprison human rights monitors, journalists, and lawyers who defend human rights and those accused of terrorism. Also caught in its snare are environmental activists, the political opposition, health professionals and common citizens with no previous contact with subversive groups. The very broad definition of "collaboration with terrorism" puts anyone who even unwittingly assists a guerrilla at risk of a minimum of 20 years in prison, as several cases detailed below demonstrate.

In many cases, the burden of proof appears to be on the defendant to prove innocence, rather than on the state to prove guilt. An example, reported by the news magazine *Sí* in October 1992, is the case of **Francisco Alania**, the first person sentenced by the faceless court system set up under Decree Law 25475.

Alania was arrested on August 7 during a police raid on a shantytown settlement known as "Felix Raucana," in the Lima municipality of Ate-Vitarte. According to police, Alania had been wearing a blue sweatsuit when he was arrested and was carrying a knapsack filled with explosives. Yet news footage taken of the arrest shows Alania wearing different clothes and carrying only a newspaper. Moreover, a paraffin test performed by police proved negative. Yet Alania was convicted of terrorism and sentenced to ten years in prison.

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<sup>37</sup> Although Decree Law 25475 specified that police could hold defendants for 15 days, a subsequent decree amplified the period to 30 days. This is an extremely long period of pre-trial arrest, and it creates the opportunity both for arbitrary exercise of the power to arrest and for torture.

According to the defense lawyer, the conviction was based on three points: Alania was from the city of Cerro de Pasco, considered a "red zone"; terrorists wear sweatsuits, so as not to be recognized; and police paraffin tests for gunpowder on Alania's hands were negative because terrorists use third persons to carry explosives.

Sí made several unsuccessful attempts to get copies of the court's decision, which reportedly was not even passed to Alania's lawyer. When the decision was read to his client, the defense lawyer told Sí, "(he) began crying. A member of the Shining Path, on the other hand, would have shouted cheers to his party."<sup>38</sup>

One human rights lawyer told Americas Watch that he has seen cases where the Shining Path has turned such practices to its advantage. He cites the case of a captured Shining Path member who told police that his colleagues included a mayor well-known for his militance in the United Left (IU) party. By implicating the mayor, the guerrilla apparently hoped to remove him from his post, thus making the infiltration and organizing work of the Shining Path in the area easier.<sup>39</sup>

Despite the bias towards conviction inherent in the system, Americas Watch is aware of several cases in which innocent people have been acquitted by faceless courts (see below). Nonetheless, they have been freed only after spending months in prison. Far from creating speedy trials, Decree Law 25475 has created a judicial bottleneck in which people spend months waiting in prison for the special court room to be built or the faceless judges to be selected.

Decree Law 25659, known as the "Treason Law," further abrogates fundamental rights by mandating that civilians accused of participating in certain terrorist acts be tried by military courts. Those convicted are sentenced automatically to life in prison, although in some cases, sentences have been reduced on appeal. Military courts now mete out life sentences not only for serious crimes of violence, but also for teachers deemed to have "used their role to influence their students in justifying terrorism" according to Decree Law 25880. In addition, people with only the most tenuous ties to guerrilla activity—for instance, collaborating with food or transportation, often forced—risk drawing the same penalty as the group's most important leaders, in disregard for the principle of proportionate sentencing.

Like the civilian terrorism trials, trials on treason charges are carried out in closed hearings before "faceless" judges and prosecutors. Decree Law 25728 allows the courts to try and convict those accused of terrorism or treason *in absentia* without mandating that they receive any legal defense. As in terrorism trials before civilian courts, lawyers are prevented from taking on more than one case of either terrorism or treason per year, severely restricting defendants' access to counsel.

The interplay of these laws has created inherent injustices in the prosecution of those accused of collaborating with, sympathizing with, or belonging to guerrilla groups. The right to defense

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<sup>38</sup> "And the Evidence," *Sí*, October 19, 1992, p. 27, reprinted in FBIS Latin America Daily Report, December 9, 1992, p. 46.

<sup>39</sup> *Atestado Nro. 33 JECOTE—XII—R—P*, Puno, September 1, 1992.

is severely restricted and elements of accountability fundamental to due process are removed.

During police interrogation, no defense lawyer is allowed to be present. Often, an *abogado de oficio*, or public defender, is asked to sign the police report of an interrogation without having been present. Many terrorism defendants are being tried without an attorney, and a number of defense attorneys have themselves been sentenced to life imprisonment on treason charges. And the denial of habeas corpus, especially during the period of police incommunicado detention, is an open invitation to torture.

Much of what was formerly the work of investigative judges—that is, defining the charge and supporting it with police evidence—is now done by the police, in particular DINCOTE. Once a police file has been assembled and passed to the appropriate prosecuting attorney (*fiscal provincial*), the law mandates that the case must go forward regardless of whether the prosecutor or judge find merit in the charges.

Lawyers defending such cases report that it is common for police to begin to "negotiate" a sentence before passing a case to the prosecutor in exchange for a stiff bribe. In one case reported to Americas Watch, a police commander asked for \$2,000 in exchange for reducing the charge from treason to terrorism. In other cases, bribes of smaller amounts have been suggested for reducing the charge from terrorism to common crime. To fail to come to an agreement with police on the charge is to risk having a client incarcerated for a lengthy period with no guarantee of winning an appeal, even on bogus evidence.<sup>40</sup> One human rights lawyer who asked for anonymity told Americas Watch of the capture of Julio Palao, a well-known Shining Path leader in Puno who was released after reportedly paying a stiff bribe.

Once a case has been passed to the prosecuting attorney, lawyers have access to their clients. However, they report that they are never allowed to speak with their clients in private, violating a cardinal principle of the right to counsel. Once a client has been transferred to prison, communication becomes even more difficult. Along with family members, lawyers must speak with their clients in special visiting rooms in prison, where the double pane of glass separating them and the din of others screaming messages makes detailed conversation nearly impossible.

## **B. Individuals Unfairly Prosecuted**

The following are cases of human rights monitors, journalists, academics, members of the political opposition, environmentalists, doctors, lawyers, and common citizens caught in the maze of the terrorism and treason trials. Also included are members of Shining Path sentenced to life imprisonment in proceedings with serious due process violations.

We document these cases at length to show the tremendous impact on many sectors of society that the anti-terrorism laws have had.

As noted above, the Peruvian government is required by its own Constitution and by international human rights instruments it has ratified to provide a fair trial before an independent and impartial tribunal to each and every person accused of a crime, no matter how egregious. Americas Watch urges the government to appoint an independent panel of jurists to

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<sup>40</sup> Interviews in Lima from February 15-19, 1993. Also, "Observando las leyes," in *Caretas*, February 18, 1992, pp. 28-32.



review each case handled by the special terrorism and treason courts in order to determine in which cases there is sufficient evidence to warrant a new trial, with all guarantees of due process. In those cases in which no evidence is found, the accused should be freed immediately.

## 1. Human Rights Monitors

The following human rights monitors have been charged under the anti-terrorism law, even though they have repeatedly and strongly condemned guerrilla actions:

♦ **Angélica Mendoza Almeida:** President of the Association of Families of the Disappeared in Ayacucho (ANFASEP), Mendoza, 66, is a well-respected and long-time human rights activist. On September 15, 1992, President Fujimori announced that he had a list prepared by the SIN of 67 people who he claimed were "Shining Path ambassadors abroad." Mendoza was described as the guerrilla "ambassador" to France.

As noted in the introduction to this report, Mendoza has publicly criticized the Shining Path and has herself received threats from the guerrillas for her work in Ayacucho. The charge appears based on a trip she made to Europe in 1985, invited by Nobel Prize winner Adolfo Pérez Esquivel and the Peace and Justice Service (SERPAJ). During that trip, she spent three days in France. In 1988, Mendoza visited Europe a second time as a guest of Amnesty International's German section. Mendoza and her lawyer presented a complaint about the accusation against her to the Human Rights Prosecutor's office in Lima and the Inter-American Commission on Human Rights in Washington, D.C. on September 18.

Nevertheless, on September 21, a formal investigation was opened of Mendoza for apology for terrorism. Mendoza was forced to suspend her activities in Ayacucho and remains in hiding. After the initial 30-day investigative period, another 20 days were requested and granted. Although the prosecuting attorney, the judge, the *Fiscal Superior Decano*, and the "faceless" prosecutor have all agreed that there is no proof to substantiate the charge, the law mandates that the process finish before a suspect can be released or an arrest warrant lifted.<sup>41</sup> On December 17, a warrant was issued for her arrest.

The accusation has brought troubles for Mendoza's children as well. Mendoza told Americas Watch that her youngest daughter was picked up along with two friends on February 3, 1993, by men who they believed work for military intelligence in Ayacucho. They were taken to the "Los Cabitos" army base, where Maribel, 24, was forced to strip and was beaten. Among the questions asked of her were the whereabouts of her family members, including her mother and a sister who also works with ANFASEP, and the identity of the lawyer representing Mendoza. After six hours, she and her companions were forced to sign a paper promising not to denounce the detention.

♦ **Raquel Martín Castillo de Mejía:** Martín's husband, a human rights lawyer, was murdered by soldiers who also raped her in 1989. Martín's name was included in the list published in September 1992 of so-called Shining Path ambassadors living abroad. From exile in Sweden, Martín has pressed for prosecution of her husband's killers and those responsible for raping her through the Inter-American Commission on Human Rights. Although the investigating

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<sup>41</sup> *Expediente Nro. 136—92* from the 43rd *Juzgado de Instrucción de Lima*, January 26, 1993.

prosecutor found no grounds for the accusation of terrorism against her, on January 26, 1993, the faceless prosecutor formally charged Martín with terrorism and requested a sentence of twenty years and a joint payment with other "Shining Path Ambassadors" of reparations of 500 million *nuevos soles*, approximately \$290 million.<sup>42</sup>

♦ **Carlos Chipoco:** a human rights attorney and co-founder of the Lima-based Institute for Legal Defense (IDL), Chipoco represented victims in two important cases before the Inter-American Court on Human Rights. A Lima prosecutor accused Chipoco of apology for terrorism based on his previous work with Americas Watch and on his current work before the Inter-American Court. The SIN report upon which the proceedings are based described Americas Watch as a group which "indiscriminately supports the Shining Path."

On November 12, 1992, Americas Watch sent an energetic protest to President Fujimori over the steps taken against Chipoco and the accusation against Americas Watch. Two weeks later, on November 25, Americas Watch asked the Peruvian Embassy in Washington to clarify if our reports are considered subversive material and our staff subject to prosecution in Peru. In February 1993, Americas Watch received word that Chipoco was not currently involved in any judicial procedure in Peru.

♦ **José Ramírez García:** a journalist and human rights defender from Cuzco, Ramírez was arrested on August 17, 1992, and accused of terrorism based on Shining Path literature found in his home office and the fact that he was photocopying *Shining Path: The World's Deadliest Revolutionary Movement*, a book written by British journalist Simon Strong. Ramírez specializes in investigating political violence and human rights, and played a key role in documenting the Chumbivilcas case, which involved the killing by an army patrol of 12 peasants and the disappearance of eight more in 1990. Ramírez remained in jail until his acquittal in late December 1992.

♦ **Tito Guido Gallegos:** a human rights attorney with the Vicariate of Solidarity in Puno, Gallegos was charged with collaboration with terrorism because he presented a habeas corpus writ to secure release of a 13-year-old boy wrongfully imprisoned. The charges were dropped after international protests.

## 2. Journalists

♦ **Magno Sosa:** A correspondent for the daily *La República* based in Ayacucho, Sosa was arrested by police on September 5, 1992, on charges of terrorism. As evidence, the police claimed to have a letter typed by Sosa to the Shining Path which indicated Sosa worked with the insurgents. However, the police did not turn the letter over to the court until two months after his arrest. Two graphological tests were performed on the letter to determine whether it had been typed by Sosa. The first test was inconclusive; the second, completed on December 11 by the Handwriting Analysis Department of the National Police, concluded that the letter could not be traced to Sosa's machine. Despite the lack of evidence, Sosa remained in jail until February 1993. He has since left the country out of fear for his safety.

♦ **Danilo Quijano Silva:** A journalist and economist, Danilo Quijano Silva has been in detention

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<sup>42</sup> *Expediente Nro. 136—92*, 43rd JPL, January 26, 1993.

since his May 13, 1992 arrest on charges of links with the MRTA. The charge appears to stem from his relationship with María Luisa Benza, with whom he began a business in December 1990. The enterprise was short-lived, and Quijano liquidated his investment. But when Benza was arrested in 1992 and charged with operating a computer center for the insurgents, Quijano was also detained, apparently because the business retained the name of their former enterprise. Although Quijano has been able to prove that his relationship with Benza and the business terminated in January 1992, he remains in prison. Although he suffers from bleeding ulcers, he does not receive regular medication. As in all cases of terrorism defendants, reading and writing material are prohibited while Quijano remains in custody.

### 3. Academics

♦ **Emilio Farid Matuk Castro:** this university professor was named in the list prepared by the SIN that included a wide range of Peruvians suspected of *apología del terrorismo* outside Peru. Nevertheless, no evidence has been presented linking Matuk to any illicit activities. He has since been cleared of any charges.

♦ **Alvaro Villavicencio Whitembury:** this university professor was arrested in December 1992 as he prepared to depart Lima for a professional meeting in the United States. Police accused him under Decree Law 25475 based on a shockingly tenuous series of suppositions, random associations, and a two-decades-old contact with Abimael Guzmán, the Shining Path leader. Villavicencio remains detained as of this writing.

The prime piece of evidence against him appears to be the fact that Villavicencio once taught with Guzmán in the San Cristóbal University of Huamanga. Although Villavicencio left the University in 1969, a year before Guzmán formed the political party that became the Shining Path, this brief association is considered suggestive. In addition, Villavicencio is from Cajabamba, Cajamarca, an area that has recently seen an increase in Shining Path activity. Finally, during his early years, Guzmán used as his pseudonym the name "Alvaro," leading police to suppose he felt a strong political bond to Villavicencio.

Despite the fact that the DINCOTE determined that there was no substantial evidence linking Villavicencio to the Shining Path, the "faceless" prosecuting attorney formally accused him of terrorism, asserting that he was an "inseparable friend of Guzmán's." He asked for a 20-year sentence.<sup>43</sup>

### 4. Political Opposition

♦ **Máximo Agustín Mantilla Campos:** On April 5, 1992, army soldiers bearing no warrant and unaccompanied by a representative of the Public Ministry, occupied and searched the home of Agustín Mantilla and his family in Lima, violating constitutional protections on the inviolability of the home.

The soldiers who searched the house filed two reports. The first, signed by Jorge Luis Mantilla Campos, brother of the accused, contains a list of the weapons present in the home, all of which were properly registered, according to the family. The second declaration includes additional

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<sup>43</sup> Case file.

weapons, including explosives and other illegal materials. However, no family member signed this document, putting its validity into serious question. Mantilla and his brother were detained with no judicial order. After four days of incommunicado detention, Jorge Luis Mantilla was freed. Agustín Mantilla remained in incommunicado detention for 19 days and remains in custody despite the irregularities of his arrest.<sup>44</sup>

♦ **Segundo Centurión Pérez and Lorenzo Izquierdo:** Centurión and Izquierdo are well-known peasant activists who for many years have led the Agrarian Federation "Selva Maestra" of San Martín department (FASMA), which has played an important role in community organizing and human rights work in the region.

On September 26, 1992, Centurión, the FASMA president, was asked to come to the Morales army base in Tarapoto to answer some questions. Instead, he was arrested. When FASMA vice-president Izquierdo went to the base with a prosecutor to inquire about Centurión the next day, he was also arrested. The men were kept 22 days on the base before being transferred to the Technical Police.

Along with **Oscar Pinto**, president of the San Martín Defense Front (FEDIP-SM), a civil peace movement, the men were charged with attempting to justify violent acts perpetrated by the MRTA, drafting a "Struggle Plan" to coordinate with the MRTA, belonging to *Patria Libre*, a political party linked to the MRTA, and collecting information on abuses committed by the army, allegedly to "create unease in the population and in some way identify themselves with the postulates which the subversive groups proclaim."<sup>45</sup> As proof, the case cites public statements by the FASMA and FEDIP-SM about human rights abuses and a "Struggle Plan" circulated by corn and sorghum farmers from the Ponaza Valley. Centurión denies authoring the document.

In a statement taken after his arrest, Centurión pointed out that he has never spoken in favor of armed insurrection and has criticized the actions of the MRTA in the past and encouraged FASMA members to cooperate with army patrols. While the political party *Patria Libre* did hold meetings in the FASMA office, Centurión notes that it was not illegal to do so and that at the time, Yehude Simon, its leader, was an elected representative to the Congress. Centurión denies membership in *Patria Libre*.

## 5. Environmental Activists

The arrest of 11 Peruvians, some peasants from the town of San Ignacio, Cajamarca, in northern Peru, as suspected "terrorists" for their defense of a national forest demonstrates how the anti-terrorism law was used in an apparent effort to silence protests to protect a rare forest. The defendants—members of a "Forest Defense Front" opposed to logging in the El Chaupe forest—were held from the time of their arrests in late June 1992 until early March 1993, despite serious irregularities in the handling of the case and an absence of incriminating evidence.<sup>46</sup>

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<sup>44</sup> Mantilla was detained before the new terrorism laws were put into effect. He is therefore being tried in a regular civilian court.

<sup>45</sup> *Instrucción Nro. 215/92—A* by the investigative judge in Tarapoto, December 24, 1992.

<sup>46</sup> See Americas Watch, "Is the Defense of a Forest an Act of Terrorism in Peru? The Case of the San Ignacio Forest Defense Front," February 1993.

Although the prosecutor had requested 30-year sentences, the defendants were acquitted after international protests.

## 6. Doctors

In February 1993, the DINCOTE captured a group of doctors which it said formed the "health-care apparatus" of the Shining Path. The doctors were charged under Decree Law 25475 with voluntary collaboration with terrorism for having medically assisted guerrillas. Voluntary collaboration with terrorism carries a twenty-year prison sentence. DINCOTE told reporters it had a list of nearly 100 doctors or paramedics who have collaborated with the Shining Path and should therefore be prosecuted.<sup>47</sup>

Americas Watch strenuously objects to the application of the terrorism law to doctors who assist wounded guerrillas. Doctors are bound by professional ethics to treat the sick and wounded without discrimination. Moreover, allowing medical personnel to care for the sick and wounded is a key principle of international humanitarian law. Common Article 3 of the Geneva Conventions, applicable to situations of internal armed conflict, states, "The wounded and sick shall be collected and cared for." Standards for the protection of medical neutrality have been incorporated into the Code of Medical Neutrality in Armed Conflict which provides, among other things, that the sick and wounded shall be treated regardless of their affiliations and with no distinctions on any grounds other than medical ones.<sup>48</sup>

Nonetheless, there is an obligation under Peruvian domestic law, common in many countries, that individuals with knowledge of the commission of a crime (including medical professionals) are required to report it to the authorities (Article 407, Penal Code). This crime carries a maximum sentence of four years in prison. Americas Watch believes this is the only crime for which the health professionals whose cases are below described could reasonably be tried.

The cases described below are shocking instances in which health professionals, acting in keeping with the ethics of their profession, and in some cases under threat of death, provided emergency assistance to wounded combatants, and are wrongfully charged with terrorism or treason.

♦ **Dr. Luis Polo Rivera:** a military tribunal found Dr. Polo guilty of treason and sentenced him to life in prison for having amputated the leg of Shining Path member Blas Ccori Bustamante Polo, despite the fact that the guerrilla has affirmed in writing that police pressured him into falsely implicating the doctor. Ccori Bustamante was injured in April 1990 while attempting to blow up an electrical tower. He has stated that he was denied the opportunity to wear his glasses when identifying Dr. Polo, although he is nearsighted and suffers from a severe astigmatism. Dr. Polo was only allowed to see his attorney once before the trial, and the attorney was granted only ten minutes to present his defense before the faceless military court.<sup>49</sup>

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<sup>47</sup> "Dincote presentó a traumatólogo que operó a senderistas heridos," *El Comercio*, February 25, 1993.

<sup>48</sup> See Physicians for Human Rights & Asia Watch, *The Crackdown in Kashmir: Torture of Detainees and Assaults on the Medical Community*, (February 1993), pp. 14-15.

<sup>49</sup> Cynthia Alvarez Calderón, "Peligros de una justicia precipitada" *Oiga*, January 25, 1993, pp. 47-48; "Casos Dudosos," *Caretas*, January 21, 1993, pp. 40-48.

♦ **Dr. Alberto Figueroa Gutarra:** an orthopedic surgeon with a specialty in emergency medical care, Figueroa, 46, was arrested on February 10, 1993, and accused of collaborating with the Shining Path by treating four wounded combatants between 1985 and 1987. Dr. Figueroa insists that he was forced to do so because of death threats made against him and his family members.

♦ **Dr. Ricardo Bautista Palomino, Lina Mori Mendoza** (nurse), and **Rómulo Mori Zavaleta:** Dr. Bautista, nurse Lina Mori, and Rómulo Mori were arrested on May 22 in Chachapoyas (department of Amazonas) and accused of voluntary collaboration with terrorism for having given emergency medical aid to an MRTA combatant, who happened to be the nephew of Rómulo Mori Zavaleta. The nephew, Edinson Mori Barrientos, was wounded in an attack on the police station in Luya, in which two officers were killed.

Rómulo Mori told police that he had been drawn into the case when a nephew appeared at his office and demanded that he find a doctor for his brother, Edinson. When Mori told his nephew that he could not leave work, Mori says he replied, "Do you want to continue living?" Mori learned that the wounded man was at that moment with his sister, who had also been threatened. Mori arranged for Dr. Ricardo Bautista Palomino to see the injured combatant, assisted by Lina Mori Mendoza, without notifying them of the circumstances. Dr. Ricardo Bautista says he was also threatened when he resisted treating Edinson. Lina Mori says that she was never told that Edinson was a combatant and that she assisted the surgery at gunpoint. Soon after the emergency surgery was completed, police arrested Edinson, Dr. Bautista, Lina Mori, Rómulo Mori, and nine others implicated in the case.<sup>50</sup>

The prosecutor who investigated the charges determined that there was insufficient evidence to prosecute Rómulo Mori and Lina Mori. Nonetheless, the judge declared that it was fully proven that Rómulo Mori, Lina Mori, and Dr. Bautista were "voluntary collaborators with terrorism" and that the death threats reported by the defendants were "not sufficient to conclude that their lives were at stake."<sup>51</sup> The accused remain in prison waiting for the formation of a special "faceless" court in Chiclayo.

## 7. Defense Lawyers

Attorneys defending those accused of terrorism and treason face tremendous legal obstacles to their work, as described above. Yet they also face the very serious risk of suffering personal violence or being prosecuted under the same terrorism and treason procedures their clients face. In July 1988, Manuel Febres Cordero, an attorney who defended accused members of Shining Path, was abducted and killed by the so-called Rodrigo Franco Command, a death squad linked to the government of former President Alán García. And on July 20, 1992, attorney Jorge Cartagena Vargas was seriously injured in an apparent assassination attempt.

At least nine attorneys who formed the so-called Association of Democratic Attorneys, including its most prominent members, have been detained. Some have been tried and

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<sup>50</sup> *Atestado No. 007—JP—CT—PNP—A*, May 29, 1992.

<sup>51</sup> *Dictamen Fiscal No. 431—92—MP—FPM—CH*, Chachapoyas, August 7, 1992; and decision by Dr. Rodomiro A. Vilcarromero, Chachapoyas, August 21, 1992.

condemned to life imprisonment by military courts. Their conviction concerns Americas Watch not only for the due process violations described in this report, but also because we fear they may have been targeted because of their legitimate legal defense of members of Shining Path. The convictions of Jorge Cartagena and Alfredo Crespo are detailed below:

♦ **Jorge Cartagena and Alfredo Crespo:** Members of the Association of Democratic Lawyers, Cartagena and Crespo are well-known in Peru for their defense of Shining Path combatants, including Crespo's defense of Abimael Guzmán. On April 5, Cartagena was arrested along with five other lawyers and later released for lack of evidence.

On January 11, 1993, Cartagena and Crespo were arrested again and accused of treason. Both were tried by military courts and sentenced to life in prison.

The case against them appears to have been based primarily on Crespo's alleged possession of a purported Shining Path hit list, the so-called Centinela list. On December 3, 1992, the SIN sent a report to the military prosecutor alleging that the Shining Path had infiltrated a double agent called Centinela into the Directorate of Intelligence of the Army (DINTE).<sup>52</sup> Centinela, according to the SIN, had prepared a list of names and addresses of army intelligence officers, apparently to be assassinated. Centinela then delivered it to Crespo, an act that would seem to link Crespo to the Shining Path's leadership. However, the list and Centinela's true loyalties are the subject of heated controversy.

A former soldier named **Clemente Eleusipo Alayo Calderón** claims he was hired by DINTE to infiltrate the Shining Path and either "physically eliminate" attorneys Crespo and Cartagena or "sow evidence" that would incriminate them in the leadership of Shining Path. His immediate superior in the DINTE was **Mesmer Carlés Talledo**, a 20-year army veteran. Alayo says he was promised \$30,000 for each lawyer arrested based on his work. Carlés says he was promised a trip abroad.

But on October 28, Carlés was allegedly kidnapped by the DINTE and taken to a secret torture center in Chilca, where he was kept incommunicado for 34 days. Carlés told his wife and mother that he was subjected to constant interrogation and torture during that period until he broke a drinking glass and slit his wrists to force his captors to give him medical attention. While he denies knowing anything about the Centinela list, he says he was forced, under threat of death to himself and family, to sign a confession to having written the hit list. At no point in the process was he allowed to consult a lawyer.

In a handwritten letter provided to Americas Watch, Alayo contends that his assumed identity Centinela was a fake, prepared to entrap Cartagena and Crespo. On December 9, he was arrested and taken to an interview with the officer in charge of the Second Judicial Zone of the Army. Alayo claims the officer told him all was prepared to condemn Cartagena and Crespo to life in prison and all he had to do was serve as the lead witness. Alayo and Carlés would then be released through the "Repentance Law," which allows special sentences for those who testify against high Shining Path cadres. That way they would regain their freedom without publicly revealing their link to army intelligence.

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<sup>52</sup> The SIN, or National Intelligence Service, technically coordinates the intelligence activities of the armed forces, including the Directorate of Intelligence of the Army (DINTE) and its subordinate agency, the Army Intelligence Service (SIE).

Instead, Carlés and Alayo were accused of being double agents for the Shining Path. On January 27, Carlés was sentenced to 20 years in prison for treason. Alayo was sentenced to 15 years.<sup>53</sup>

Curiously, the Centinela list does not figure in the list of documents seized in either Crespo or Cartagena's office, according to their defense team. The SIN report alleges that it was found in the office of Martha Huatay, the president of the Association of Democratic Attorneys. However, the police report on the materials found in Huatay's office does not include the infamous hit list.

## 8. Common Citizens

Many citizens, caught in the wrong place at the wrong time, have been dragged into this labyrinth as the following cases illustrate.

♦ **San Marcos law students: Dina Berrocal Tito, Carlos Delgado Altamirano, Filomeno Arturo Encarnación Nieto and Gerardo Munárriz Ulloa** were detained on November 18, 1992, and accused of forming part of a Shining Path legal defense team.

In the case of Berrocal and Munárriz, the evidence rests on the fact that their names were found on a torn-up notebook page in the office of Martha Huatay, a Shining Path leader who headed the Association of Democratic Lawyers and is now serving a life sentence for treason. In addition, police say they found guerrilla propaganda in the students' homes, but later apparently retracted this assertion when witnesses testified that it had been planted during the search. Neither Munárriz, Berrocal or their family members signed the search results. During the search, Munárriz was blindfolded.

Munárriz denies any connection with Huatay. According to Munárriz's lawyer, Huatay denied any knowledge of the list of names when questioned. The defense has never seen an original or a hand-writing test linking the list to Huatay.<sup>54</sup>

Munárriz claims that during his interrogation in DINCOTE, he was given the impression that the police considered him to be a terrorist simply because he was a law student at the University of San Marcos. Munárriz also noted that the police threatened to plant a "terrorist document" among the items seized during his search, and did not formally register the items until six days after his arrest. Later, he heard officers repeatedly refer to planting evidence, even with the presence of a prosecutor since "they have only two eyes and there are many of us."

Both Berrocal and Munárriz claim they were mistreated during their interrogation. Munárriz says DINCOTE officers threatened to hang them, kill them and "take them night fishing at the beach," an apparent reference to beach-side executions. Munárriz saw officers hit Berrocal. At one point, Munárriz says he was taken to the beach at night with several other detainees where they were threatened and forced to confess to crimes he claims he did not commit. Despite the lack of evidence, police claim Berrocal took part in at least 250 attacks.<sup>55</sup>

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<sup>53</sup> Interview with Carlés family and handwritten testimony of Clemente Alayo Calderón from prison.

<sup>54</sup> report by Adolfo Fernando Farfán, January 26, 1993.

<sup>55</sup> Interview with Munárriz and Berrocal families in Lima on February 17, 1993.



Both were subsequently presented to the press dressed in striped convict uniforms.<sup>56</sup> They are presently awaiting trial by a faceless court.

♦ **Oscar Cruz Vera:** The case against Cruz, a 21-year-old peasant and musician, rests on the testimony of his 13-year-old sister, Maura, who police say testified that her brother was a friend of "Cristina," a well-known Shining Path leader in Cajabamba, Cajamarca. At the time, "Cristina" was implicated in the murder of a local mayor and the mining of a road. Cruz was arrested on August 10, 1992, and charged with terrorism.

Maura Cruz later retracted her statement, claiming that the police had hit her and forced her to ingest through the nose salt water mixed with *rocoto*, a fiery Andean chili pepper. Maura has a severe stutter and is prone to seizures. Cruz also says he was tortured, although while still in police custody he signed two statements saying he had not been mistreated.

Although he denied any connection to the Shining Path and could prove that he was at home celebrating his birthday on the day the mayor was murdered, the prosecutor forwarded an accusation to the investigative judge based solely on the coerced testimony of his sister.<sup>57</sup> Recognizing this, Judge Oscar Vásquez concluded that there was no evidence linking Cruz to acts of terrorism.<sup>58</sup> Cruz remains in prison, however, until the case reaches the final court for a decision.

♦ **Samuel Ghia:** Ghia is a Peruvian who has lived and worked in the United States for many years. In coordination with a group of fellow Peruvians concerned about poverty, lack of health care, and human rights, Ghia helped organize an event in San Francisco in 1990 to raise funds for a health clinic in a Lima shantytown. During the event, Ghia and other organizers stressed the need to link US military for Peru to improvements in human rights.

That year, Ghia also made a public protest on April 8 by burning his voting card at the Peruvian Consulate in San Francisco as Peruvian nationals lined up to vote in the presidential election, an act he later described to *Caretas* as a "peaceful protest" on behalf of the thousands of Peruvian victims of political violence and those trapped in emergency zones and unable to vote.

In September 1992, Ghia's name was included on the SIN list of 67 people supposedly directing pro-Shining Path activities outside Peru. On January 26, 1993, the faceless prosecutor handling the case in Lima formally accused Ghia of terrorism and requested a twenty year prison term and payment of reparations to the state of 500 million *nuevos soles* (approximately \$287,000,000). the evidence presented against Ghia included his protest at the consulate. The faceless prosecutor notes that during his protest, Ghia shouted slogans *against* the armed conflict. Nonetheless, the prosecutor states, falsely, that Ghia is a leader of the "Committee to Support the

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<sup>56</sup> See letter to CEAS from Gerardo Munárriz Ulloa dated January 14, 1993.

<sup>57</sup> *Atestado No. 23—SRPNP—JPCT*, Cajamarca, July 5, 1992; and *Denuncia No. 134*, Dra. Olga Pretell Lavado, Cajamarca, July 6, 1992.

<sup>58</sup> *Expediente No. 152—92*, by Judge Oscar Vásquez Arana, Cajamarca, September 14, 1992.

Revolution in Peru," a pro-Shining Path group also based in San Francisco.<sup>59</sup>

♦ **Luis González Albuquerque:** A state telephone worker, González, 33, is a union member and community activist in Piura. His family claims his arrest for treason stems from a misjudgement he made in agreeing to keep tools and car parts for a friend, Jaime Palacios. On several occasions, González agreed to keep Palacios's belongings in his home. Once, he looked into the bag and confirmed its contents.

However, Palacios came on September 22, 1992, and left a new bag, which González assumed also contained tools. A week later, both Palacios and González were arrested in a police sweep, but González was immediately released. The next day, Palacios arrived at the house in police custody to pick up the bag. When police examined it, they discovered that it contained weapons and home-made explosives. Police linked one of the weapons to the assassination of Ricardo Ramos, a regional official.

On October 1, González was arrested and charged with treason as an accomplice in Ramos's murder. Even though Palacios testified that González had nothing to do with the Shining Path, he was convicted. González also claims he was tortured into signing a confession. He was sentenced to life in prison on November 10, but the sentence was later reduced to 20 years.<sup>60</sup>

♦ **Genaro Guerrero Soel:** A resident of the "José Carlos Mariátegui" settlement in Lima, Guerrero had just attended a Peruvian folklore concert sponsored by the National University of San Marcos when he was detained on September 24, 1992. Although police claim they found in Guerrero's possession literature supporting the Shining Path, he claims he was carrying only the program from the musical event.

When police submitted photocopies of the documents, Guerrero says the quality was so poor it was impossible to determine the subject matter. Guerrero also states that he was forced to sign the formal registry mentioning these captured documents because of threats by police. Neighbors and family members testified that Guerrero had no connection to the Shining Path. He is currently being tried for terrorism with a possible sentence of 20 years.<sup>61</sup>

♦ **Rogelio Maquera Condori:** A musician and student, Maquera played in a family band called Magistral Ilave in the department of Puno. On August 15, 1992, he left home to pick up a bass drum (*bombo*) from a neighbor's house. Coincidentally, a bombing had taken place at the Ilave municipal building six blocks away.

Police stopped and questioned Maquera as he arrived to pick up the drum. Although no evidence linked him to the explosion, he was detained and charged under the terrorism law "because he could not justify his presence" near the explosion. Despite the fact that both the prosecutor and investigating judge determined that there was insufficient evidence linking him

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<sup>59</sup> *Expediente Nro. 136-92*, 43rd JPL, January 26, 1993; Interviews with Grupo Peru, Samuel Ghia, IDL.

<sup>60</sup> Interview with family members in Lima on February 17, 1993.

<sup>61</sup> *Expediente Nro. 217-92*, January 6, 1993, by Genaro Guerrero Soel and *Expediente Nro. 238-92* by the faceless prosecutor, January 21, 1993.

to the attack, he remains in prison. The faceless attorney has requested a twenty-year sentence.<sup>62</sup>

♦ **Geronimo Soncco:** Soncco was accused of helping plan a Shining Path ambush of a military patrol. Nevertheless, Soncco claims that the accusation stems from a misunderstanding between military patrols. On January 29, he went to the district capital of Limbani, Puno, to vote in municipal elections held nationwide. However, the town authorities arrested him on the suspicion of belonging to the MRTA. Meanwhile, an Army patrol, in town to guard the delivery of the ballot boxes, was informed that the Shining Path was planning an ambush of their vehicles when they returned to their base at Sandia. When the officer in charge learned that Soncco knew the area well, he asked him to serve as a guide. Soncco says he agreed, and helped them scout out the ambush ahead of time.

Two soldiers and an officer were killed in the ensuing five-hour clash. Soncco retrieved the bodies and helped guide the leaderless soldiers back to their base. To his surprise, however, when he was handed over to soldiers from Puno several days later, he was severely beaten, accused of having taken part in the ambush, and charged under the terrorism law. Soncco claims he was later forced to sign a confession of his involvement in the MRTA or suffer torture by electric charge. Along with others detained in connection with the ambush, Soncco was presented to the press dressed in a striped convict's uniform. When Americas Watch spoke to him, he was still in the hospital, suffering from the beating and tuberculosis, aggravated by the harsh conditions of his imprisonment.<sup>63</sup>

♦ **Darnilda Pardavé Trujillo de Daza:** Pardavé was detained on October 2, 1992, and accused of terrorism. Apparently, the only evidence sustaining the charge is the fact that Pardavé was "closely tied to" her sister, Yovanka Pardavé, a Shining Path member killed during the prison disturbances of May 1992. A complaint for Darnilda Pardavé's imprisonment is currently being processed by the Inter-American Commission on Human Rights.

♦ **Juan Carlos Quispe Gutiérrez and Edilberto Antonio Macarlupú García:** Police arrested these two Callao University students in central Lima on August 14, 1992, alleging that they had taken part in the assassination of police officer Carlos Vereau Asmat, the wounding of a traffic policeman, and the robbery of the murder weapon from a private security guard. On September 22, Quispe, 25, and Macarlupú, 22, were sentenced to life in prison for treason, a sentence that was upheld on appeal on October 10. The students were the first to be given life in prison by a military court martial under the treason law.

Family members and lawyers defending the pair claim no evidence exists linking them to each other or the killing. Both men deny belonging to the Shining Path. They claim they were in central Lima by chance to make purchases. Although the murder took place on Alfonso Ugarte Avenue, the men were arrested in separate spots near the Plaza 2 de Mayo, as they awaited buses. Although neither man is accused of actually firing the shot that killed Vereau—in the police reports a third man is mentioned who actually fired the gun—both tested positive in the paraffin test applied by police for residual gunpowder on the hands, which the men claim is

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<sup>62</sup> *Dictamen Nro. 292-92, Instrucción Nro. 276-92* by the Puno Prosecutor's office, November 30, 1992, and *Instrucción Nro. 276-92-89* by Judge Jaime Aragon Nuñez, December 4, 1992.

<sup>63</sup> Interview with Geronimo Soncco in Puno on February 23, 1993.

because they were forced by police to wipe their hands on a cloth spread with powder.

While in DINCOTE custody, both were severely tortured, according to their families. Their testimonies were taken without the presence of a prosecutor, as required by law.<sup>64</sup>

No incriminating material was found in a search of their homes. Efforts by the defense to submit exculpatory evidence in the men's favor were ignored by the court. Repeated requests to reconstruct the crime and the men's detention were also ignored. A formal identification of the men was never made by the witnesses used to convict them. The defense lawyers were not allowed to be present when the men gave their depositions to the court, and the families claim the court-appointed *abogados de oficio* who were present made no attempt to mount a defense. Notifications from the court of scheduled hearings never reached the families or lawyers.<sup>65</sup>

♦ **José Miguel Reaño López:** Reaño was detained by soldiers along with his wife on June 25, 1992, and accused of leading a faction of the MRTA. Despite the fact that Reaño's lawyers introduced proof that the sole witness in the case was mentally unstable, as in all terrorism cases, Reaño was denied even provisional liberty by the court, because no one—not even those detained without any reasonable evidence—may be released until the entire process is finished and a final decision made by a panel of faceless judges, a process that in many cases has stretched over six months.<sup>66</sup> Reaño was acquitted and freed on March 6, 1993, after more than eight months in prison.

♦ **Miguel Fernando Ruiz-Conejo Márquez:** Ruiz-Conejo, 32, was detained on September 12, 1992, in the Lima home of his fiancée. The police accused him of forming part of *Socorro Popular*, a Shining Path front group, based on his friendship with a Shining Path member who lived in the house where Guzmán and other Shining Path members were caught. In addition, a Shining Path document was allegedly found on the hard disk of one of the computers owned by Inverplant, S.A., Ruiz-Conejo's business. His friend, Carlos Incháustegui, is an admitted Shining Path member who worked periodically for Ruiz-Conejo's landscape design business.

Ruiz-Conejo denied involvement in the Shining Path and any knowledge of Incháustegui's involvement. He told police that Incháustegui had informed him that the house's owner occupied the two upper floors and had never met its lower floor residents. Although he helped Incháustegui move in, Ruiz-Conejo claims he never saw or heard the upper floor residents. As a favor, he offered to guarantee Incháustegui for the rent payments and wrote a letter to the landlord, which was never used.

Ruiz-Conejo also denied any knowledge of the Shining Path information allegedly recorded on one of his business computers, a machine used by a secretary and Incháustegui. The actual content of that material was never registered when Ruiz-Conejo's house was searched and the computers seized. The material has never been made available to Ruiz-Conejo's attorney.

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<sup>64</sup> "Dos universitarios serían condenados a cadena perpetua," *La República*, September 12, 1992.

<sup>65</sup> *Expediente Nro. 01-92, II-ZJE*, September 11, 24 and October 5, 1992, by Juan Quispe Asto and José Florentino Macarlupú, fathers of the accused.

<sup>66</sup> *Expediente Nro. 108-92, Notificación Judicial* for José Miguel Reaño.

Descriptions of its content vary in each official document used to incriminate Ruiz-Conejo. First it is described as preparatory notes to a Shining Path conference and later as a press release reviewing advances in the so-called People's War.<sup>67</sup>

Police assured the Ruiz-Conejo family that he would be released for lack of evidence after 15 days in detention. Believing he would be released, Ruiz-Conejo helped police decipher codes used in other computers seized as evidence against suspected Shining Path members. Nevertheless, a faceless prosecutor in Lima accused Ruiz-Conejo of treason on September 9, 1992, based on his relationship with Incháustegui, his alleged participation in protecting Shining Path leaders, and the document allegedly found on his computer.<sup>68</sup>

Ruiz-Conejo was passed directly from incommunicado detention to a secret military court in Puno, where the trial was held without the presence of a lawyer or any family member. Although Ruiz-Conejo was called to give his statement before the court on October 4, his family was not notified of his transfer to Puno—two hours from Lima by commercial flight—until October 6, and thus were unable to send a lawyer to represent him or submit materials in his defense.

On October 5, a military prosecutor formulated an accusation against Incháustegui and Ruiz-Conejo, this time alluding to the Shining Path document as a three-page press release reviewing the results of armed struggle. The military prosecutor concluded that the mere fact that Ruiz-Conejo maintained a friendship with Incháustegui—and vacationed in Rio de Janeiro with him during Carnaval in 1987—suggested a tie to the Shining Path "*that has not been sufficiently disproven by the accused*," placing the defendant in the position of proving innocence.<sup>69</sup>

While terrorism proceedings before faceless civilian courts have been plagued by delays, those before faceless military courts have been summary. On October 7, the court martial sentenced Ruiz-Conejo, Incháustegui, and two others to life in prison and a fine of \$20 billion plus interest. On October 8, Ruiz-Conejo's lawyer was given two hours to review the case and prepare an appeal. The next day, the Special Tribunal for Military Justice in Arequipa confirmed the sentence and threw out of court evidence submitted by Ruiz-Conejo for his defense, in effect making any attempt to "disprove" the accusation impossible.<sup>70</sup>

When Ruiz-Conejo pled for 30 minutes before the judges to explain his case, his lawyer was conceded only 15 minutes. This time, the lawyer was told to present himself at a fourth location, San Lorenzo Island.<sup>71</sup> While the court asserted that there had been no anomalies in the process, it reduced Ruiz-Conejo's sentence to thirty years in prison.<sup>72</sup> He is currently serving his sentence in

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<sup>67</sup> See Ruiz declarations to DINCOTE and investigative judge.

<sup>68</sup> *Dictamen de Denuncia del Fiscal* 002-92 on September 26, 1992; and Letter from Ruiz-Conejo to the Supreme Council of Military Justice, October 13, 1992.

<sup>69</sup> *Dictamen del Fiscal Militar (Acusación) Foja 722 del Expediente Nro. 02-92*, Puno, October 5, 1992, p. 2.

<sup>70</sup> *Notificación en la causa Nro. 02-92*, Arequipa, October 9, 1992, p. 3.

<sup>71</sup> *Expediente Nro. 002-92-PT-Puno*, Supreme Council of Military Justice, *Tribunal Especial*.

the "Manco Cápac" Army base in Puno.<sup>73</sup>

♦ **José Antonio Sánchez Gutiérrez:** Sánchez, a University of Callao student, claims he was shopping for a toy for his niece in a Lau Chun store in Lima when the MRTA seized it to rob money, taking him hostage. However, when police arrived, they arrested him, accused him of having participated in the attack, and beat him so badly they broke his left arm. According to a statement made by Sánchez to the courts, as they were beating him, police yelled, "Damned terrorist! Assassin! We will kill you!"<sup>74</sup> Sánchez passed out.

When he awoke, he found himself inside the trunk of a police car. The police took him to their precinct, where they allegedly beat him again, forcing him to sign a confession to having participated in the Lau Chun attack. Later, Sánchez learned that he had been detained by the *Guardia de Asalto* of the San Andrés precinct and transferred to the custody of the DINCOTE—Delta 5 team. For the next four days, he was interrogated and beaten repeatedly, he says. Only on the fifth day was he allowed to see a doctor, who put his arm in a cast.

Despite the apparent lack of evidence linking Sánchez to the MRTA, the attack, or any guerrilla activity whatsoever, the prosecutor concluded that Sánchez could not convincingly explain why he happened to be in the Lau Chun store at that time. He thus formally charged Sánchez with terrorism and requested that he be sentenced to thirty years in prison and payment of a stiff fine.<sup>75</sup>

♦ **César Sosa Silapú:** a member of the leftist *Partido Unificado Mariateguista* (PUM), Sosa, 31, has long been active in politics in Piura. On July 9, 1992, a Shining Path assassination squad murdered Luis Paredes Maceda, a former president of the Grau Region, of which Piura is a part. Witnesses claimed that a man in a wheelchair had participated in the attack. Sosa, who had childhood polio, is confined to a wheelchair.

The Piura police detained Sosa on August 27 after receiving an anonymous telephone call. Sosa denied participation in the attack. Although a handicapped guerrilla implicated in the murder was subsequently captured and charged, Sosa remains in detention accused of terrorism based on PUM and other socialist literature found in his library.<sup>76</sup>

## 9. Members of the Shining Path

Since promulgation of the treason law on August 13, most accused members of Shining Path have been tried under summary proceedings by secret court martials which severely violate the

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<sup>72</sup> *Expediente 02-92*, Lima, October 15, 1992.

<sup>73</sup> This information is also based on interviews with family members in Lima on February 17, 1993.

<sup>74</sup> Statement by Sánchez written in Lima on December 2, 1992.

<sup>75</sup> *Expediente Nro. 77-92*, Lima, October 20, 1992.

<sup>76</sup> Interview with IDL in Lima, February 16, 1993; *Atestado Nro. 002-JSSECOTE*, Piura, September 4, 1992; "Condenaron a cadena perpetua a doce terroristas y ocho 'no habidos'," *El Correo*, November 11, 1992; and Javier Diez-Canseco, "El Pozo y el Péndulo," *Caretas* October 29, 1992, pp. 25, 88.

right to due process. The trial of **Abimael Guzmán**—someone whose responsibility for thousands of deaths could easily have been established under conditions which afforded him the basic elements of due process—was typical of this mockery of justice.

On October 1, 1992, a faceless navy tribunal on the San Lorenzo island off the coast of Lima held its first hearing in the trial against Guzmán. No press or other observers were allowed. On October 7, the Supreme Council of Military Justice announced that the Naval tribunal had convicted Guzmán, Elena Iparraguirre Revoredo and Zenón Walter Vargas Cárdenas of treason. They were each sentenced to life imprisonment and required to pay collectively \$25 billion plus interest in compensation to the state.<sup>77</sup> Guzmán's appeals process lasted only a matter of days, and was not fruitful.

In an October 7, 1992 letter to President Fujimori, Americas Watch congratulated the government for its capture of Guzmán, who we believe should be prosecuted for thousands of murders of civilians carried out by his armed organization. However, we objected to violations of his right to a fair trial on several grounds:

- ♦ the trial of civilians by military tribunals violates the Peruvian Constitution as well as Peru's international obligations to guarantee every defendant the right to trial by an independent and impartial tribunal. The excessively speedy proceedings afforded little opportunity to present a defense or to contradict evidence presented by the prosecution, plus the extremely short time allowed for appeals all contributed to make the trial of Abimael Guzmán and his codefendants a travesty.

- ♦ Guzmán's right to a fair trial was further abridged by numerous statements by President Fujimori prejudging the outcome; the day before the military court's ruling in his case, the President announced he would be convicted and spend his life in prison. The day after he was convicted, the president expressed certainty that his appeals would fail, which they did.

### **C. Trials of Military Coup Plotters**

On November 13, 1992, a group of retired and active duty officers and civilians were arrested for plotting the overthrow of the Fujimori government. From his prison cell, the ringleader, General (r) Jaime Salinas Sedó declared that the officers were planning to restore constitutional government, a move which he argued was legitimized by Article 82 of the Constitution, which recognizes that "The population has the right of insurgency in defense of the constitutional order." Salinas said they called off their plans when they realized that their plot had been betrayed.

Thirty three officers were arrested and charged with rebellion. Later, other charges were added, including intent to kill President Fujimori, his advisor Vladimiro Montesinos, and other unnamed officials. The officers were tried by a military court and sentenced to terms ranging from eight months to eight years. Although they were not tried under the treason or terrorism laws and therefore did not go before faceless courts, the officers' trial was nonetheless cloaked in secrecy. Americas Watch wrote to President Fujimori on February 11, 1993, requesting

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<sup>77</sup> "Communique on Guzmán Sentencing Released," Lima *Radio Programas del Perú*, October 7, 1992, reprinted in FBIS Latin America Daily Report, October 8, 1992, p. 34.

permission to observe the trial. We noted that the allegations that the military had tortured four of the accused officers were grounds for serious concern. We received no reply to our letter.

Despite the secrecy of the proceedings, substantial due process violations were evident, including the following:

- ◆ Secret trials violate due process by removing the element of accountability.
- ◆ The officers were held incommunicado for 10-20 days, in violation of the Military Code of Justice, which sets a maximum of five days incommunicado detention (Article 526).
- ◆ As noted in Chapter II, four of the officers claim they were tortured in the headquarters of the SIN and coerced into implicating a group of civilian politicians in the plot.<sup>78</sup> This was not seriously investigated by the authorities.
- ◆ Based on these extrajudicial statements, Alberto Borea, attorney for General (r) Salinas, was accused of involvement in the plot and thus barred from representing his client.
- ◆ The government allowed documents which it claimed implicated the officers to be shown on television news programs, before showing them to the defendants or their attorneys.
- ◆ The military tribunal ignored motions by the defense, such as the request for a *reconocimiento judicial* (judicial crime scene investigation) of the National Palace, according to Borea.
- ◆ General Salinas's son, Jaime Salinas, was held incommunicado for 17 days in the DINCOTE on charges of terrorism. Later, although the DINCOTE had reportedly recommended he be released for lack of evidence, the public prosecutor pressed charges against Salinas, Jr., accusing him of conspiracy to commit homicide against President Fujimori. He was freed on parole and immediately fled the country.

## **D. Prison Conditions for Terrorism Defendants**

Following the coup, the government embarked on an effort to gain control over prisons where those accused or convicted of politically motivated crimes were housed. Particularly notorious were those cellblocks in the Miguel Castro prison in Canto Grande controlled by the Shining Path prisoners, where inmates painted revolutionary graffiti, performed military style exercises in uniform, and sang hymns to the Shining Path and its leader, Abimael Guzmán.

Following the bloody incident of May 1992, in which thirty-nine inmates and three policemen were killed when the authorities attempted to transfer the women prisoners from Canto Grande

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<sup>78</sup> The officers' handwritten descriptions of the tortures were widely distributed in Lima. One of the officers, Major César Cáceres Haro, later allowed a photograph of himself to be doctored to show bruises and delivered to the magazine *Caretas* with a false story about the circumstances of the photograph. After President Fujimori revealed on television that the photograph published by *Caretas* was doctored, Major Cáceres issued a public letter of apology, saying he had engaged in the deception out of desperation because of the lack of investigation of their legitimate claims of torture. *Caretas* also expressed regret that it had been caught in the deception.



to another facility, the government established a strict new regime of controls, many of which violate the United Nations' Standard Minimum Rules for the Treatment of Prisoners. In the weeks after the violent incident, all the women and some men accused of subversive activities were moved from Canto Grande to other prisons.

During the weeks after the transfer, prisoners were prevented from speaking with their lawyers or receiving family visits or packages of clothes, medicine and food. They were kept three to a cell with no opportunity to leave their cell except to shower briefly once a week. Food was inadequate and books and writing materials were prohibited. Americas Watch has repeatedly written to Peruvian authorities about excessive aspects of the new controls, but we have received no reply. Americas Watch was allowed to visit the female prisoners accused of belonging the guerrilla groups in Chorrillos in May and July. However, we were denied permission to visit the new prison constructed for men accused of belonging to the Shining Path in Puno in February 1993. The following information about prison conditions since our July visit comes from relatives of inmates.

Visits are now allowed once a month for 30 minutes. In practice, however, family members report that after they pass the security controls and wait for the inmates to appear, they have less than 15 minutes to communicate. To do so, they must speak loudly so that their voices carry through the double pane of glass separating them from the room where the prisoners are brought. Two prisoners are brought to each booth, so there is no privacy. Food gifts, normally used to supplement the inadequate prison provisions, remain severely restricted. Families are allowed to deliver only two pieces of any one fruit, and only three species, so the maximum amount of fruit for one month might be two oranges, two pears, and two bananas. Prison rations usually consist of two pieces of bread and tea for breakfast and either soup or a plate of wheat stew or rice with a few vegetables and a whiff of meat later in the day.

Often, the lack of water is so acute that male prisoners are forced to save small amounts for several days, then wash out of a bucket in their cells, which they share with two to three others. Time outdoors is strictly controlled and prisoners are prevented from speaking. As punishment, time outdoors is suspended. The male prisoners report that they have spent up to a month without being let outside.

The women report that they are subject to midnight searches by hooded men who yell insults, mistreat them, and confiscate food and other belongings.

Access to medical care is also severely restricted. Yehude Simón, a former lawmaker in pretrial detention since June 1992 on terrorism charges, says he was forced to wait for treatment for a heart condition from December 31, 1992, until February 16, 1993. When he was finally granted access to his patient, Simón's doctor informed him that he could no longer offer treatment, since the mere fact that he had Simón as a patient put him at risk of arrest as a terrorist collaborator. Prisoners report that they can get medical attention from the prison clinic only when their condition is extremely grave. One prisoner reportedly had an infected tooth pulled without anesthesia after days of agony only to have the wound cauterized with a heated iron stick.

Apparently as part of its get tough policy with prisoners, the Ministry of Justice, which administers the nation's penitentiaries, began in July 1992 to impose new conditions for prison access on the delegates of the International Committee of the Red Cross who regularly visit

prisoners accused of politically motivated crimes. By the middle of September, all ICRC delegates' authorizations had expired because of these new restrictions. ICRC prison visits were not restored until March 1993, and then only after heavy international pressure.

Americas Watch recognizes that security concerns mandate certain restrictions in the prison regime, yet these restrictions should be proportional and have a reasonable relation with legitimate security objectives, so that they do not constitute indiscriminate punishment imposed without due process. We see no security justification for the severe limits on family and medical visits, and the provision of food and reading materials. These restrictions clearly violate the U.N.'s Standard Minimum Rules for the Treatment of Prisoners. Nor do we see justification for the denial of ICRC access.

## V. IMPUNITY

The overwhelming majority of cases of human rights violations remain uninvestigated and unpunished in Peru. The coup of April 5, 1992, in certain ways worsened this situation, by weakening a judiciary already unprepared to take on violators of human rights, by the dismissal of certain judges who had adjudicated with integrity human rights cases, and by the closing of the congress, which had carried out several important investigations into notorious violations.

The issue of military versus civilian jurisdiction goes to the heart of the failure to prosecute human rights abuses. With very few exceptions, the military court system has claimed jurisdiction in but failed to punish cases in which members of the military have committed human rights violations. Members of the police have been prosecuted in a small number of cases.

The filing of charges in military jurisdiction acts to thwart civilian inquiry through a jurisdictional challenge. Proceedings in military tribunals are secret, as are the outcomes, unless the army decides to publicize them. Human rights groups argue that military courts ought only to hear cases involving violations of the military code of justice, such as rebellion, desertion, insubordination, while matters such as homicide, rape, torture, and disappearance should be handled by the civilian court system. However, the Supreme Court of Peru, which in most cases is called upon to rule on jurisdictional conflicts, has almost always favored military jurisdiction for crimes committed by the military.

In February, the military announced decisions in two notorious cases, the massacre of 15 peasants—including seven children—from Santa Bárbara, Huancavelica in July 1991, and the slaying of 69 peasants, including six children, in Accomarca in 1985.<sup>79</sup>

The Santa Bárbara massacre is one of nine cases singled out by the United States Congress to measure the government's will to punish violators from within its ranks. In the case, a military tribunal tried six members of the army, including a lieutenant, for crimes including homicide and rape. In the end, it did not find anyone guilty of those more serious offenses. Lieutenant Javier Bendeزú Vargas was convicted of abuse of authority and perjury (*falsedad*), for having ordered soldier Simón Fidel Breña Palante to kill the peasants and for subsequently covering up the crime. However, he was acquitted on charges of murder, disobedience, negligence and extortion. He was sentenced to ten years, minus the time served since November 7, 1991. He must pay damages of 4,000 *nuevos soles* (approximately \$2,300) to the relatives of the victims, and he has been barred from future service in the armed forces or National Police. Lieutenant Abel Hipólito Gallo Coca was acquitted of all charges, as was Sergeant Oscar Alberto Carrera Gonzales, Sergeant Dennis Wilfredo Pacheco Zambrano, and soldier Simón Fidel Breña Palante. NCO Fidel Gino Eusebio Huaytalla was found guilty of disobedience aggravated by theft and sentenced to ten months in prison, but was immediately freed because of time served. He was ordered to pay 200 *nuevos soles* (approximately \$115) in damages to the army. NCO Duilio Chipana Tarqui was convicted of an offense against public duties (*delito contra el deber y dignidad de la función*), for which he was sentenced to eight months, but released because of time served.

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<sup>79</sup> For a detailed description of the Santa Bárbara case, see Americas Watch, "Peru: Civil Society and Democracy Under Fire," August 1992, pp. 14-18; the Accomarca case is described in Americas Watch, *Human Rights in Peru After President García's First Year*, September 1986, pp. 5-8.

He was ordered to pay 100 *nuevos soles* (approximately \$57) to the army.<sup>80</sup>

Americas Watch views this decision as a whitewash. Giving an order to kill civilians is not simply a matter of abuse of authority, it is murder. This decision confirms the extraordinary leniency with which military courts judge their peers.

In the Accomarca case, it was reported in the press that a military appeals court (*Sala Revisora*) had confirmed a sentence of six years for Lieutenant Telmo Hurtado for the slaying of the 69 peasants.<sup>81</sup> Once again, a military officer responsible for slaying a large number of defenseless peasants is accused of abuse of authority and acquitted on murder charges. It is unclear whether Hurtado will actually spend any time behind bars; according to an investigation by the newspaper *La República*, Hurtado has yet to be confined, even though he was sentenced in 1987 to four years for the massacre, a sentence which was increased to six years—but suspended—in March 1992.

To the best of our knowledge, there has been no progress in any other case.

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<sup>80</sup> Decision, *Consejo Supremo de Justicia Militar, Presidencia*, Lima, February 10, 1993.

<sup>81</sup> "Seis años para teniente Hurtado," *Expreso*, February 26, 1993.

## VI. FREEDOM OF EXPRESSION

Freedom of expression, and especially press freedom, has eroded since the self-imposed coup, in large part from the chilling effect of prosecutions against those who express views out of favor with the government. In recent months, Peruvian journalists have suffered a continuous pattern of harassment and legal persecution which gravely imperils press freedom there. The print media, in particular, seem to be under direct pressure to cease publishing certain articles, especially those that involve criticism of Fujimori and his advisers, military abuses, and drug-trafficking. Several prominent journalists who have published articles which irritated the government have been sued for defamation, others have been imprisoned on charges of *apología del terrorismo*. Still others have been threatened or disappeared.

The case of journalist **Enrique Zileri** and the magazine *Caretas* has been seen by many as symbolic of the assault on press freedoms. Peru's Supreme Court—which since April 5 has been packed with regime supporters—ruled on August 3, 1992, that Zileri, the editor of *Caretas*, was guilty of defaming powerful presidential advisor Vladimiro Montesinos. The article which gave rise to the suit, published in August 1990, describes Montesinos's key position in the Fujimori government. Zileri was sentenced to one year probation and fined \$10,000.

Since April 5, *Caretas* has become an outspoken proponent of a return to democracy.<sup>82</sup> Moreover, the magazine has for a decade tracked the career of Montesinos, a former captain dismissed from the army for allegedly selling secrets to the United States. Since Fujimori became president in 1990, Montesinos has exercised tremendous power behind the scenes. Although President Fujimori describes Montesinos's role in modest terms, as his personal lawyer and an advisor to the SIN, there is evidence that he actually controls the SIN and exercises authority over the army.<sup>83</sup> Montesinos seeks to operate beyond the reach of public scrutiny; he has not granted a press interview since 1983 and had not been photographed by journalists for a decade, until a *Caretas* photographer surreptitiously filmed him last month. Despite Montesinos's best efforts, *Caretas* has repeatedly lifted the veil on his activities in the Fujimori regime.

Since November, Montesinos has twice petitioned the court to jail Zileri. In response, the judge warned Zileri that his magazine's coverage must not offend Montesinos for the next 18 months, or he will be imprisoned for a year. On January 19, 1993, several Lima newspapers reported that the Fourth Criminal Law Panel of the Superior Court of Lima had issued an order barring *Caretas* and Zileri from writing about Montesinos *at all* for a year and a half. Failure to abide by the ruling, the press reports said, would bring a one-year prison term for Zileri. Curiously, *Caretas* was never notified by the court of this alleged ruling.

Recently, Defense Minister Víctor Malca ordered the police to investigate **Ricardo Uceda**, the

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<sup>82</sup> Among the military's first actions during the coup were to shut down weekly magazines *Caretas*, *Oiga*, and *Si* and detain Gustavo Gorriti, a writer for foreign papers and a columnist for *Caretas*. Several radio reporters were also detained, and troops were stationed in the newsrooms of both domestic and international press. International protests prompted the government to release the reporters, withdraw the troops, and allow the weeklies to reopen.

<sup>83</sup> On November 19, 1992, *Caretas* published the transcript of a cellular telephone conversation between Montesinos, Armed Forces commander Nicolás de Bari Hermoza, and Fujimori in which Montesinos appeared to give directions to the armed forces in suppressing the aborted coup.

editor of the respected newsweekly *Sí* for allegedly falsifying information. Malca's action was motivated by the publication in *Sí* on December 7, 1992, of information implicating military intelligence and senior army officers such as Malca in the November 1991 massacre of 15 people attending a chicken barbecue in downtown Lima. Among the victims were some suspected members of the insurgent Shining Path's Metropolitan Committee. The government has made no serious effort to investigate the crime, blaming the Shining Path despite evidence implicating the intelligence services. The publication of new information on the case in *Sí* was a significant breakthrough in a case which has been dormant since the public prosecutor investigating the case was transferred and fired and Fujimori's coup brought to an abrupt halt congressional investigations into the massacre. In this light, the proceedings initiated by the defense minister appear intended to cover up military responsibility for the crime, as well as to suppress free expression.

General Clemente Noel, chief of the Political-Military Command of Ayacucho in 1983, the year in which eight journalists were killed in Uchuraccay, Ayacucho, filed suit against two TV journalists in March 1992 for having presented an anonymous police officer who had served in Ayacucho during General Noel's tenure, on a television program in which he accused General Noel of responsibility for human rights violations. The trial court acquitted the journalists, Cecilia Valenzuela and César Hildebrandt, and Hildebrandt traveled to Spain on a scholarship. Recently, however, that decision was annulled and Valenzuela, who has since moved to *Caretas*, was sentenced to a year's probation and required to pay a fine. And although Hildebrandt was in communication with the court from Spain, he was declared in contempt and a warrant was issued for his arrest.<sup>84</sup>

The case of journalist Magno Sosa, held for six months on unsubstantiated charges of terrorism, is described in Chapter IV, as is the case of Danilo Quijano, still imprisoned. Huaura journalist Pedro Yauri Bustamante was disappeared by armed uniformed men on June 23, 1992, as described in Chapter II.

In addition, several journalists have suffered anonymous threats, including **Edilberto Coronado**, a correspondent for the daily *La República* in Ayacucho, and in early December, **José Abanto**, photographer for the magazine *Oiga*, was detained for several hours by hooded intelligence officers who confiscated his film.

*Caretas* editor Zileri and reporter **Cecilia Valenzuela** were threatened with death by an anonymous caller to the magazine on November 19, the day it published the transcript of the cellular phone conversation between Fujimori, Hermoza, and Montesinos (described above). And on February 27, 1993, an envelope addressed to Valenzuela was found in the elevator at the magazine. Inside was a chicken's head with a black cord around the neck and a photograph of Valenzuela spattered with blood.

There have also been complaints by print media that they are often visited by state tax authorities, who practice frequent examinations of their accounting procedures. Certain advertisers appear to book ads well in advance of a publication, then withdraw them suddenly, under government pressure, according to Francisco Igartúa, editor of the magazine *Oiga*.<sup>85</sup>

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<sup>84</sup> Interview with Valenzuela, "Prensa Hostigada," *ideele*, March 1993, p. 29.

<sup>85</sup> "De qué libertad de prensa estamos hablando?" *Oiga*, February 15, p.11.

At the same time, broadcast media, especially television, appear to have a special relationship with the executive. For instance, a journalist working with Channel 5 was apparently given a weapon he claimed was to be used to kill Fujimori during the November 13 aborted coup attempt, a weapon none of the men involved accepted as their own. The broadcast of this news report took place just as the accused military officers went to trial for planning the coup and allegedly conspiring to kill Fujimori and his adviser Montesinos. That channel also displayed alleged incriminating documents to which neither the coup plotters nor their attorneys had been granted access.

Not only journalists have seen their freedom of expression limited by prosecutions. In the end of December and early January, Defense Minister Malca ordered the initiation of judicial action against two retired military officers—General (r) Luis Cisneros Vizquerra and General (r) Alberto Arciniega Huby—who had criticized the military leadership and presidential advisor Vladimiro Montesinos in press interviews. Both were accused of offending the armed forces (*ultraje a los Institutos Armados*) and insulting a superior officer.<sup>86</sup>

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<sup>86</sup> *Resolución Ministerial Nro. 0001-93-DE/EP*, January 4, 1993; and *Resolución Ministerial Nor. 1612-92-DE/EP*, December 31, 1992.





## VII. U.S. POLICY

The Clinton Administration appears determined to make human rights the most important element in bilateral relations with Peru, an improvement over the Bush administration's policy, in which human rights often took a back seat to anti-narcotics objectives. The Bush Administration initially responded to the April 5 coup by calling for a speedy return to democracy. Assistant Secretary of State for Inter-American Affairs Bernard Aronson, caught by surprise by the coup on a visit to Lima, canceled meetings with the president and instead met with human rights groups. In a speech before the OAS, Secretary of State James Baker stated "you cannot destroy democracy in order to save it."

Moreover, Washington quickly suspended military aid and other security assistance, but not anti-narcotics assistance to police forces or humanitarian aid.

In early 1993, Assistant Secretary Aronson made several strong statements in favor of human rights in Peru. Most noteworthy was his January 6, 1993 press conference via satellite with Lima journalists in which described human rights as a fundamental issue in bilateral relations. (The Clinton administration has nominated diplomat Alexander Watson to replace Aronson, but as he had not been confirmed by the Senate at the time of this writing.)

Nonetheless, the Bush administration's overall record in promoting human rights and democracy after the coup was uneven. Even as Baker and Aronson made the helpful statements cited above in April 1992, unidentified State Department officials were quoted as providing a rationale for Fujimori's actions and downplaying their negative impact on democracy. The Bush administration's message to Lima was mixed in other ways as well. On the one hand, it suspended military aid. On the other hand, it did not suspend police aid worth \$19 million a year. It pressed the Inter-American Development Bank to extend a major loan to Peru in September because the government had scheduled the elections for the Constituent Congress, even though U.S. law prohibits U.S. support for such loans to governments which consistently violate human rights.

More generally, U.S. policy toward Peru during the Bush administration was shaped by an ill-conceived, militarized "war on drugs" at the source of production. The Bush administration pushed for the direct involvement of the Andean armed forces in drug law enforcement, and sought congressional support for U.S. military aid to these forces by whitewashing the human rights records of the recipient forces. There are signs that the Clinton administration will change course on drug policy, de-emphasizing military tactics at the source in exchange for programs aimed to reduce demand in the United States.

Americas Watch is encouraged by the Clinton administration's explicit linking of human rights to balance of payments support. As noted in Chapter I, negotiations between Peruvian and U.S. officials in February produced an agreement that the Fujimori government would undertake certain measures designed to improve the human rights situation in exchange for U.S. provision of a bridge loan and a commitment to convening a donors' meeting.

Nonetheless, the steps announced by Peru represent relatively minor policy adjustments and are not likely, by themselves, to result in significant improvements in the human rights situation. For this reason, we urge the Clinton administration to continue withholding further security assistance (including balance of payments support) to Peru and oppose loans from international financial institutions which do not exclusively address basic human needs until Lima takes the following steps:

- ◆ restores an independent judiciary;
- ◆ repeals anti-terrorist decrees which violate fundamental human rights;
- ◆ establishes a mechanism for independent review of the cases of all those prosecuted under these decrees with a view towards determining which cases should be retried by independent and impartial tribunals and which individuals should be freed immediately;
- ◆ makes good faith progress in halting gross human rights violations, including extrajudicial executions, disappearances, torture, and rape by the security forces;
- ◆ brings to justice those agents of the state who have committed serious violations of human rights, such as the Cayara massacre of 1988, the Barrios Altos massacre of 1991, and other massacres and targeted murders and disappearances.

We also urge the Clinton administration to monitor the work of the Democratic Constituent Congress to see whether it evolves as an independent branch of government or whether it is subordinate to the executive.

In addition, full compliance with conditions which the U.S. Congress attached to previous anti-narcotics assistance should also be sought before providing further security assistance. Those conditions required the Peruvian government to implement fully plans for a central registry of detainees accessible to relatives, attorneys, and humanitarian agencies in an effort to curb disappearances; grant the ICRC unrestricted access to detention centers; and make progress in the prosecution of nine egregious human rights violations identified by the U.S. Congress as key cases, among other steps.<sup>87</sup>

Peru's efforts to meet the conditions appeared to have brought about a downturn in the number of disappearances in the second half of 1992. However, the number of disappearances remains stubbornly high, and the conditions remain largely unmet. As noted above, ICRC access to prisons was interrupted in July 1992 and not restored until March 1993; and with the exception of the conviction for a lesser offense of a lieutenant in the Santa Bárbara massacre, there has been no progress in resolving any of the nine cases. Meanwhile, the government has charged Raquel Martín Castillo de Mejía, wife of the murdered human rights lawyer Fernando Mejía Egocheaga, with terrorism, in what appears to be retaliation for her filing of a complaint with the Inter-American Commission on Human Rights.

The central registry of detainees has yet to function properly. Although the U.S. government reports that equipment for the registry was turned over to the attorney general in January 1993, as of late February the system was still not functioning. Moreover, there are indications that in

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<sup>87</sup> The nine cases are the November 1988 murder of Huanta journalist Hugo Bustíos Saavedra; the June 1989 slaying of human rights lawyer Fernando Mejía Egocheaga in Oxapampa; the September 1990 killings of two youths, Zacarías Pasca Huamani and Marcelino Valencia Alvarado by police in Chumbivilcas; the August 1990 massacre of 16 peasants in Iquicha; the September 1990 murder of Bernabé Baldeón and the torture of nine others in Vilcashuamán; the July 1991 massacre of 15 peasants from Santa Bárbara; the March 1991 disappearance of local authorities from Chuschi; the June 1991 murder by police of two youths and a medical student in Callao; and the May 1988 massacre and disappearances of dozens of peasants in Cayara.

some areas of the country, the list will not be maintained by public prosecutors, as intended, but rather by the police, compromising the original concept of a list available to all.<sup>88</sup>

We urge the U.S. Congress and administration to hold firm on these conditions, which were designed as a practical tool for reducing the incidence of disappearances and extrajudicial executions.

Our position is consistent with U.S. foreign aid legislation, which prohibits all security assistance—including what are called "economic support funds"—to countries where there is a consistent pattern of gross human rights abuses.<sup>89</sup> U.S. law also requires the administration to "use its voice and vote" in international financial institutions to channel assistance "toward countries other than those whose governments engage in (1) a pattern of gross violations of internationally recognized human rights...."<sup>90</sup>

At the same time, we urge the United States to continue to channel aid designed to meet the basic human needs of the population to Peru, and to support the work of non-governmental organizations in addressing Peru's severe economic and social problems, as well as its human rights crisis.

On March 29, 1993, representatives of several human rights groups were invited to the State Department to discuss the possibility of the United States resuming aid to the Peruvian judiciary, including the faceless court system. The human rights groups present—Americas Watch, the Washington Office on Latin America, and the Lawyers Committee for Human Rights (which organized the meeting)—expressed strong objections to the renewal of any assistance to the judiciary until its independence is completely restored. Moreover, we made clear our strong objections to the faceless court system and the decrees which established it.

Americas Watch is concerned to learn that the Justice Department is poised to resume its program of providing criminal investigations training to the Peruvian police. Because this training will only serve to make more efficient the repressive penal system described in this report, we oppose it, pending completion of the conditions described above for resumption of security assistance. The ongoing provision of other forms of police assistance should be ended, by the same token.

Reportedly with the urging of the Clinton administration, the Fujimori government has requested the United Nations Human Rights Commission to provide advisory services on human rights. The Clinton administration should closely monitor Peru's performance during the year to see whether it is indeed making good faith efforts to end the abuses outlined in this report. If such an effort is not evident, the administration should press for appointment of a Special Rapporteur during the 1994 meeting of the United Nations Human Rights Commission.

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<sup>88</sup> *Oficio Nro. XII-R-PNP/OINFO, Ceremonia de Entrega de Equipos Informáticos para el Sistema del Registro Nacional de Detenidos de la XII-R-PNP.-Puno el día 03 de febrero 1993.*

<sup>89</sup> Section 502B of the Foreign Assistance Act.

<sup>90</sup> Section 701 (a) of the International Financial Institutions Act.

In December 1992, Americas Watch and the Women's Rights Project of Human Rights Watch published a report titled *Untold Terror: Violence Against Women in Peru's Armed Conflict*. The report documented dozens of cases of rape by security forces in the course of counterinsurgency operations as well as a systematic pattern by the Shining Path of threatening and assassinating women who work in grass roots organizations. In February and March, a group of U.S. lawmakers wrote to President Fujimori expressing dismay over the practice of rape by the security forces and the impunity for those in uniform who commit rape. In a television interview on March 7, President Fujimori vowed to punish those members of the security forces who commit rape.<sup>91</sup> In its reports on human rights around the world, the State Department has rightly stated for several years that rape remains an all-too-common human rights abuse in Peru. We urge the Clinton administration to go beyond statements and energetically press the Peruvian government to follow up on President Fujimori's promise.

Finally, Americas Watch urges the Clinton administration to end the assistance provided by the U.S. Central Intelligence Agency during the Bush Administration to the SIN and its *de facto* chief, cashiered army captain Vladimiro Montesinos. CIA assistance to the SIN reportedly has included the founding of a special anti-drug unit run by Montesinos, the donation of vehicles, and the training of personnel in the United States.<sup>92</sup> U.S.-donated vehicles have been used in some of the human rights violations attributed to the military intelligence service in recent years, making the United States accomplice to those abuses. Moreover, the covert ties between the CIA and the SIN, readily announced by Fujimori himself,<sup>93</sup> undermine Washington's overt policy towards Peru, which includes a suspension of military aid because of human rights violations and the April 5 coup. CIA covert aid to Montesinos and military intelligence should be terminated immediately.

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<sup>91</sup> "Peru to crack down on police rape," *Washington Times*, March 8, 1993.

<sup>92</sup> Sam Dillon, "Dark past of Peru's drug czar," *Miami Herald*, May 30, 1992; Dillon, "Peru adviser linked to drug cartels," *Miami Herald*, April 18, 1992; and Sarah Kerr, "An Interview with Gustavo Gorriti," *New York Review of Books*, June 25, 1992.

<sup>93</sup> "Fujimori Interviewed on Coup Attempt, Other Issues," *Frecuencia 2 Satellite Televisión*, November 15, 1992, reprinted in FBIS Latin America Daily Report, November 17, 1992, p. 26.

## APPENDIX

### A SELECTIVE CHRONOLOGY OF DECREES LIMITING FUNDAMENTAL RIGHTS

◆ April 5, 1992

DL 25418: invalidates all laws and constitutional provisions that counter the objectives of the government of national reconstruction.

DL 25419-25474: a range of judicial, procedural and anti-narcotic decrees, including the suspension of all judicial and prosecutorial action for ten days; the dismissal of the Court of Constitutional Guarantees<sup>94</sup>; and massive firings of court and prosecutorial officials.

◆ April 17, 1992

DL 25433: Limits writs of amparo and habeas corpus

◆ April 28, 1992

DL 25454: prohibits fired judges and prosecutors from appealing their dismissal.

◆ May 6, 1992

DL 25475: Anti-terrorism law. Redefines and substantially broadens the crime of terrorism to include such non-violent acts as "provoking anxiety" or "affecting international relations" or "*apología* for terrorism," and establishes penalties of life in prison for certain terrorist acts, including leading a terrorist group and forming part of armed terrorist group or assassination squad. Lesser penalties are established for lower levels of participation and/or collaboration. Restricts right to amparo and habeas corpus by mandating that these petitions not be decided upon until the moment of sentence. Limits the right to defense and restricts access to a lawyer. Lawyers are prohibited from representing more than one person at a time. Establishes "faceless judges" (*sala especializada*) for the prosecution of terrorism defendants. Trials to be conducted in secret hearings inside prison walls. Prosecutors also to be faceless. Also repeals crime of "forcible disappearance" contained in Art. 323 of the Penal Code.

◆ July 2, 1992

DL 25592: the crime of "disappearance" is reinserted into the Penal Code. It must be noted, however, that reinstatement cannot have retroactive effect. The result of the backhanded repeal is that disappearances that took place before July 2 have been given an effective amnesty.

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<sup>94</sup> The Court of Constitutional Guarantees was created by the 1978 Constitution as a high court specifically designed to protect constitutional rights. On April 5, 1992, Fujimori fired all its members; unlike what he did with other courts, he has not filled the positions with new members. In effect, this court has ceased to exist by presidential fiat.

♦ July 23, 1992

DL 25635: "National Intelligence System Law." Puts head of system under president with rank of minister and beyond congressional control. Mandates compliance for all citizens with any SIN (National Intelligence Service) request under penalty of prison.

DL 25643: Establishes as a crime the illicit possession --regardless of criminal intent -- of ammonium nitrate (anfo), a common fertilizer also used to make more powerful explosives. Adds it to DL 25475, but within jurisdiction of military courts.

♦ August 13, 1992

DL 25659: "Treason Law." Makes the following crimes of treason, under military jurisdiction and punishable by life in prison: use of explosives or weapons that cause physical or mental damage to people or damage to property or causing in general grave danger to the public; storing or possessing explosives, including anfo (with the intent of fabricating explosives); being a leader of a terrorist group; or anyone giving them information or helping them enter a place where they plan harm. Prohibits actions of amparo and habeas corpus for those charged under DL 25475 and DL 25659 until after the trial is completed.

♦ August 14, 1992

DL 25662: establishes double sentences for common crimes committed by police on active duty or dismissed from the force. Retired police would have their sentences increased by 50 per cent. No similar provision is enacted with respect to members of the military.

♦ September 11, 1992

DL 25708: establishes summary and secret court martials for those charged with treason under DL 25659.

♦ September 19, 1992

DL 25728: Allows for trials held in absentia for those accused of treason and terrorism.

♦ September 28, 1992

DL 25744: Allows police to carry out incommunicado "preventive detentions" for 30 days, with authorization from a military court. Again restricts lawyers to representing only one person charged with terrorism or treason at a time nationwide.

♦ November 26, 1992

DL 25880 establishes that *apología* for terrorism committed by teachers constitutes treason and thus is subject to prosecution by secret military courts with life imprisonment as the penalty for those found guilty.