

PERU

THE TWO FACES OF JUSTICE

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"Often, senseless behavior does not arise from a lack of reason but the desire to propel the reason that one has to its ultimate consequences."

—Julio Ramón Ribeyro, 1929-1994, *Prosas Apátridas* (Barcelona: Tusquets Editor, 1975)

SUMMARY AND RECOMMENDATIONS

Peruvian President Alberto Fujimori will begin his second term on July 28, 1995. The elections held in April 1995 for president, vice president, and a new congress marked in many respects the formal return to constitutional order after Fujimori closed down the congress and courts and abrogated Peru's Constitution on April 5, 1992.

Yet the judicial system has yet to be restored to its pre-coup independence.¹ And the creation of a system of faceless courts to prosecute those accused of terrorism — justified as a temporary emergency measure — stands out as anti-democratic and in violation of basic human rights principles. Together with the impunity granted to government forces who torture, rape, and murder citizens, justice under Fujimori is two-faced: benevolent to soldiers, punitive to civilians. In releasing this report, Human Rights Watch/Americas calls on President Fujimori and the newly elected congress to address immediately the twin issues of impunity and fundamental due process violations which dramatically worsened during his first term in office.

Not a single person charged with terrorism or treason in Peru since new laws were implemented in 1992 has received a fair trial. Of the thousands tried or convicted by so-called faceless courts, presided over by secret prosecutors and judges, hundreds are innocent, snared by planted evidence, perjury, mistaken identity, the uncorroborated and often politically motivated testimony of repented guerrillas, lost court files, political witch hunts, and even typographical errors in court documents. The arbitrary permeates every stage of the judicial process, erasing any pretense at fairness, impartiality, or legal procedure.

In some jurisdictions, up to forty percent of those tried by faceless courts have eventually been found innocent. Yet the havoc wrought on their careers, families, reputations, life savings, and health from months or years spent in prison awaiting a verdict can be devastating. In the three years since these laws were imposed, human rights groups have assumed the defense of 700 individuals believed innocent of any support for rebels. More have gone unregistered, since human rights groups can only attend a small portion of the pleas made to them for help.

While the face of justice turned toward civilians accused of terrorism or treason is ominous, the one that looks down on members of the security forces who abuse citizens' rights is permissive, even encouraging. Public servants who have raped, tortured, and killed may be inconvenienced for their actions temporarily, usually by the press. Eventually, though, they are able to continue their lives, unable to commit a crime heinous enough to land them in front of an impartial judge.

Peru's Democratic Constituent Congress (CCD) pushed lawlessness to a new low when it passed what may be the most sweeping amnesty of human rights crimes ever invoked in Latin America. Immediately promulgated by President Fujimori on June 15, 1995, the law insures that murder, disappearance, torture, and rape committed by agents of the state since 1980 in the course of the counterinsurgency war will go uninvestigated and unpunished. The amnesty made law what had already become custom: that members of the military form a privileged class in judicial matters.

That justice is skewed in Peru is not the result of occasional excesses or oversight by zealous officers, prosecutors, or judges. It reflects the disdain of Peru's highest leaders for human rights. Faceless courts were not set up to find justice, but to summarily convict those who came before them. Meanwhile human rights violations have for years been condoned by the military justice system. Now impunity for official abuses has been guaranteed by the amnesty.

¹Before the coup, Peru's judiciary was nominally independent, but crippled by corruption, inefficiency, and intimidation. Fujimori's remedy—which destroyed even nominal independence of the justice system—has been worse than the illness.

Having shut down the Congress and courts and assumed extraordinary powers on April 5, 1992, Fujimori decreed new, extremely broad definitions for terrorism and treason, a punitive and life-threatening prison regime for those accused, and a dual system of faceless courts, some civilian and some military, whose procedures deny the accused the most basic non-derogable due process rights.

The basic elements of this system include:

- secret trials by prosecutors and judges whose identities are never revealed (faceless courts). These trials violate the international obligation of the state to provide an independent and impartial tribunal. It is virtually impossible to guarantee impartiality when the composition of a tribunal remains a secret;
- Incommunicado police detention is permitted for fifteen days for those suspected of either terrorism or treason; this may be extended to thirty days on request by police. Prolonged incommunicado detention without access to counsel has given rise to a marked increase in police torture and is incompatible with Peru's international obligations;
- Police routinely torture those accused of terrorism or treason, and testimony gained with torture is regularly used at trial. Yet because of fear and official indifference, there is virtually no way detainees can press charges against their torturers. While researching this report, we received credible reports of beatings, rape, near-suffocation, mock executions, electrical shocks, sleep and food deprivation, and death threats;
- We are not aware of a single case in which an agent of the state has been brought before a civilian court and punished for having carried out torture. According to the Coordinadora Nacional de Derechos Humanos, a highly-respected federation of Peruvian human rights organizations, the few cases known in which military courts have investigated charges of torture have all resulted in acquittals;
- The newly defined crime of terrorism violates freedom of expression by criminalizing acts such as "provoking anxiety," "affecting international relations," or seeming to favor or excuse the behavior of suspected guerrillas, called *apología del terrorismo*;
- Police present those accused of treason to the press dressed in black and white striped prison garb, giving the impression of guilt before trial;
- Although amendments to the anti-terrorism legislation implemented in November 1993 ended an earlier prohibition on provisional liberty, in practice, those accused of terrorism continue to be imprisoned until a final verdict is rendered in their case, even absent any evidence of culpability. This in effect reverses the presumption of innocence and places the burden on the defendant to prove his or her innocence;
- Those accused of treason, an aggravated form of terrorism defined by Decree Law 25659, are tried before faceless military courts, violating the right to a fair trial guaranteed in international covenants ratified by Peru. In addition to serious crimes of violence, treason is also defined to include non-violent acts such as distributing plans or documents. Also to be tried for treason are teachers deemed to have "used their role to influence their students in justifying terrorism," according to Decree Law 25880;
- Members of the security forces supplying evidence may not be questioned during trials, leaving many defendants no opportunity to confront their accusers;
- Access to counsel is severely restricted. Even though the most glaring violation of this internationally protected right — Article 18 of Decree Law 25475 prohibiting defense attorneys from representing more than one terrorism defendant at a time — has been repealed, other restrictions remain;
- Both the terrorism law (DL 25475) and the treason law (DL 25659) violate the principle that the punishment should fit the crime, assigning the same penalty to crimes both petty and great. Under the treason law, for example, a teacher who espoused the ideals of the Communist Party of Peru-Shining Path and a terrorist who killed dozens with a car bomb could be assigned the same sentence: life imprisonment.

Far from being considered provisional measures, to be abandoned after guerrilla insurgencies have been vanquished, much of what is unfair about this legislation was incorporated into Peru's 1993 Constitution, even as the government was declaring victory over the insurgencies. Among the measures that are now constitutional mandates are military court jurisdiction over civilians accused of treason and an expansion of the death penalty to include the crimes

of terrorism and treason. A reform passed by the CCD in April 1995 calls for an end to the use of faceless courts in terrorism trials beginning in October 1995, an important, but limited step towards addressing the myriad due process violations detailed in this report. The reform would not end one of the most disturbing features of the post-1992 justice system: the use of military courts to try civilians.

Military jurisdiction over civilians accused of terrorism is especially disturbing in view of the Peruvian military's unwillingness to punish its own members who have violated the rights of civilians. With the exception of six officers convicted in the 1994 La Cantuta trial and one officer in the Santa Bárbara massacre not a single high-ranking officer has been convicted and punished for a human rights violation by a military court. To the contrary, the military has consistently acted to protect its own from civilian prosecution and punishment for serious crimes, including murder, rape, and torture. Non-commissioned officers and members of the police have been convicted in a handful of cases. However, in case after case involving gross abuses of human rights — including large-scale massacres — the military has seized jurisdiction from civilian courts and absolved the soldiers involved, or handed them shockingly light sentences.

And although the La Cantuta trial produced convictions of the material authors of the crime, the political maneuvers undertaken to ensure that military courts would win jurisdiction over the 1992 forced disappearance of nine students and a professor demonstrated the lengths to which the government would go to protect those who ordered it. When civilian courts threatened to reopen yet another case involving the government-led death squad that had committed the La Cantuta killings, the pro-government majority in the CCD passed the amnesty law, following it with another law preventing any court from reviewing the amnesty or declaring it unconstitutional. The six officers and two enlisted men convicted in the La Cantuta case and remaining in prison were among the first to be freed.

A more lethal form of arbitrary justice is practiced by the Shining Path, which has subjected those who fail to meet its ideological standards to what militants call "popular trials," a euphemism for a kangaroo court and public execution. Most of those subjected to so-called popular trials are local elected authorities, state employees, dissident party members, those who express opposition, and members of groups considered political rivals of the Shining Path, be they community associations, peasant patrols, or religious missionaries. The Coordinadora registered 173 assassinations of non-combatants by the Shining Path in 1994, many in the context of so-called popular trials.

Much has been written about the injustices built into Peruvian justice. In March 1994, the Commission of International Jurists, which visited Peru as part of an understanding between the governments of Peru and the United States to review the justice system in the wake of Fujimori's coup, released a comprehensive report with concrete suggestions for bringing Peru's practices into compliance with its international obligations. Within Peru, a wealth of reports, reform proposals, articles, and conference materials contain information on the laws. For its part, the Shining Path and its brutal methods have been amply discussed by journalists, human rights groups, and international organizations since it began its war to seize power in 1980.

Outside Peru, however, little is known about the individuals affected by these arbitrary systems of justice. It is this gap we hope to fill with this report. The nine cases examined in-depth here expose the intricate layers of injustice that exist in Peru.

The Peruvian government should overturn the amnesty law, either through a Supreme Court ruling of unconstitutionality and nullification or through an act of the congress to declare the law null and void. The amnesty law violates not only Peru's international obligations under several treaties, but also, and most importantly, the contract any state has with its citizens to uphold the rule of law. Crimes against humanity can never be accepted as necessary to defend democracy; to the contrary, they undermine democracy and contribute to a legacy of abuse and deceit. We urge Peru to name an independent Truth Commission, fully empowered to reveal the truth about all human rights violations and violations of the laws of war committed during the armed conflict. Such a commission should determine and disclose the fate and whereabouts of all victims and should publicly identify the perpetrators of each crime.

Equally urgent is an end to military jurisdiction over crimes committed by civilians. We believe this constitutes a direct violation of Peru's obligations under international covenants protecting the right to a fair trial, including the International Covenant on Civil and Political Rights and the American Convention on Human Rights, both of which Peru has ratified.

Peru should also end secret military trials for military and police officers accused of committing human rights violations. Such crimes cannot be considered acts of service even when they take place in areas placed under emergency legislation that abrogates civil rights. These trials are a building block of impunity, serving not to strengthen the armed forces but to conceal the crimes of its members. Military officers implicated in human rights crimes should be prosecuted by impartial, independent civilian courts.

In accordance with Peru's obligations to protect the right to fair trial, provisions that give the security forces broad powers of arrest, investigation, and lengthy incommunicado detention should be eliminated, putting control back in the hands of civilian authorities. While we applaud the April 1995 modifications of these laws, more needs to be done.

It is long past time for Peru to guarantee the independence of the judiciary — structurally eliminated by Fujimori — by ensuring that those appointed to the country's courts and prosecutors' offices are free from political pressure. Although we support the work of the Magistrate Honor Jury and National Magistrate Council, which seek to appoint trained, impartial judges and prosecutors to replace those named provisionally in the wake of the coup, little has been done to protect these professionals from at times overwhelming pressure from the executive and the security forces. In some cases, the recommendations of the Honor Jury have been ignored by the government, such as the July 1993 announcement by the jury that Attorney General Blanca Nélica Colán was not qualified to remain in her position. At the time of this writing, only Lima judges and prosecutors had been granted tenure by these bodies. Some 1,500 judges and prosecutors remain on provisional status.

We also believe it is time for Peru to reform the terrorism law and to appoint an independent judicial body to review all cases adjudicated since 1992. Priority should be given to cases involving twenty-year to life sentences, particularly where the individual involved was convicted as a child or where strong evidence indicates their innocence.

Additional reforms are necessary to prevent more innocent people from being jailed. These reforms should include:

- a rewriting of the definition of terrorism included in Decree Law 24575, to clearly and precisely define the crime and avoid criminalizing thought or speech;
- the inclusion of the principal of proportionality in sentencing, to respect the basic due process principle that the punishment should fit the crime;
- an end to allowing the security forces broad powers to investigate, compel testimony, and formulate charges without the intervention of judicial authorities;
- a reform of the appeals process, which is overly long and cumbersome, keeping innocent people in jail while their lawyers are prevented from questioning flawed evidence, judicial misconduct, and unexplained delays;
- a repeal of Article 140 of the Constitution, which allows courts to impose the death sentence on those convicted of terrorism or treason. In the interim, the Fujimori administration and the congress should pledge not to enact legislation implementing expanded use of the death penalty. This is a violation of Peru's obligations under the American Convention on Human Rights, which prohibits an extension of the death penalty to new crimes or its application to political and related common crimes.

The Shining Path must immediately end so-called popular trials, which violate Article 3 common to the four 1949 Geneva Conventions, as well as its widespread practice of political assassinations. Article 3 specifically outlaws

"the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples."

Article 3 also protects those captured or subjected to the power of a party to the conflict, even if they had fought for the opposing party or indirectly participated in hostilities by providing either food or other logistical support. Even the Shining Path's internal rules prohibit militants from mistreating prisoners. An emphasis on the observance of Article 3 is especially urgent given the Shining Path's treatment of the Ashaninka community in the central jungle, described later in this report.

PROSECUTION OF TERRORISM AND TREASON CASES

When on April 5, 1992, President Alberto Fujimori announced in a televised speech the coup that ended twelve years of democracy, he cited as a justification the disarray of Peru's courts, symbolized by what he once dubbed "The Palace of Injustice," a play on the colonnaded Lima building where the nation's judicial affairs are centralized.² A month earlier, a procedural error had prompted the Supreme Court to clear Shining Path leader Abimael Guzmán *in absentia* of a charge related to guerrilla activity.³

Frustrated as well by congressional opposition to tougher laws against guerrillas he had proposed in late 1991, President Fujimori dissolved Congress, fired judges and prosecutors, sent the army into the editorial offices of newspapers, magazines, and television and radio stations, and detained leading journalists, political opponents, and trade union leaders. Fired judges and prosecutors were replaced by provisional appointees, subject to dismissal and transfer at any time and without cause.⁴

² President Fujimori first invoked the phrase during his inaugural speech on July 28, 1990.

³ If Guzmán had been present for the trial (at the time, he remained at large), he would probably not have been released since he was named in a long list of pending cases. "Corte Suprema libra de toda culpa a líder senderista Abimael Guzmán," *La República*, March 20, 1992; and HRW/Americas telephone interview, Gustavo Gorriti, January 31, 1995.

⁴ Americas Watch, "Peru: Civil Society and Democracy Under Fire," *A Human Rights Watch Short Report*, vol. IV, No. 6,

A month later, also in a late-night, televised address, President Fujimori announced Decree Law (DL) 25475, known as the terrorism law. The terrorism law ushered in faceless, or secret, judges and prosecutors, harsh restrictions on the right to a defense, and punitive detention during trial.⁵ These measures were necessary, President Fujimori argued, to protect judges and prosecutors from attack, instill efficiency, and keep terrorists behind bars. Special courtrooms were constructed in prisons that put judges and prosecutors behind a panel of one-way glass and installed voice-distorting microphones to further hamper any attempt to identify them by name.⁶

In August, the treason law (DL 25659) detoured guerrilla leaders and those implicated in certain crimes, like the possession of explosives, to faceless military tribunals that carry out summary trials and operate under even more restrictive conditions. Military tribunals are made up of a panel of five judges, only one of whom is an attorney; the remaining four are career officers who receive no special legal training.⁷ They also have the power to impose a life sentence.⁸

In the twenty-nine months after the terrorism and treason laws were implemented in mid-1992, 7,667 individuals were arrested and/or charged with treason or terrorism according to Peru's joint chiefs of staff.⁹ Of those, 1,613 individuals were sentenced by faceless courts according to the government, more than double the number sentenced for similar crimes over the previous eleven years.¹⁰

After a new Constitution was approved by referendum on October 31, 1993, the way was paved for the courts, including military tribunals, to impose a death sentence on individuals convicted of terrorism or treason.¹¹ The Constitution also formalized some of the terrorism and treason laws' most controversial aspects, for example military jurisdiction over civilians accused of terrorism or treason and prolonged incommunicado detention.¹²

Since 1992, faceless courts have amassed a breath-taking record of human rights violations. To enumerate the particulars is to descend into a citizen's nightmare, where no rule is inviolable, no right guaranteed, no precedent

⁵ DL 25475, *El Peruano*, May 6, 1992.

⁶ For more on these actions, see Americas Watch, *Human Rights in Peru One Year After Fujimori's Coup* (New York: Human Rights Watch, 1993); *Report of the Commission of International Jurists on the Administration of Justice in Peru* (Washington: Internet, March 31, 1994); and *Annual Report of the Inter-American Commission on Human Rights 1993* (Washington: Organization of American States, 1994), pp. 478-516.

⁷ Commission of International Jurists, *Report on the Administration of Justice*, p. 38.

⁸ The first unjust trials held under these laws were detailed in Americas Watch, *Human Rights in Peru: One Year After Fujimori's Coup*, pp. 19-38.

⁹ "Joint Command Report Describes Anti-Terrorist Strategy," *El Peruano*, in Foreign Broadcast Information Service (FBIS), Latin America, March 28, 1994.

¹⁰ "Ex procurador '4766 terroristas se han arrepentido,'" *Expreso*, October 14, 1994.

¹¹ Because of strong international pressure, however, the CCD has yet to enact legislation that would allow tribunals to begin handing down death sentences. Expansion of the use of the death penalty is in violation of the American Convention on Human Rights, which Peru has signed and ratified. Article 4 of the American Convention on Human Rights bars states from expanding use of the death penalty beyond those crimes covered at the time of the state's ratification of the convention and also forbids its use for political and related common crimes. At a hearing on this matter at the Inter-American Court of Human Rights of the Organization of American States in July 1994, Beatriz Ramaciotti, representing the Fujimori government, conceded that enacting a statute to expand use of the death penalty would violate the Convention. Ramaciotti pledged that Peru would not take such a step without first renouncing its ratification of the Convention and waiting a year. The last person formally put to death in Peru by the government was Julio Vargas Garayar, a member of the Peruvian Air Force who was shot by firing squad in 1979 for selling Peruvian military secrets to Chile. [Gustavo Gorriti, *Sendero: Historia de la guerra milenaria en el Perú* (Lima: Apoyo, 1990), p. 20.]

¹² Peruvian Constitution, *Congreso Constituyente Democrático*, passed by referendum on October 31, 1993. The relevant sections are Articles 173, 2 (24.f), and (24.g).

honored. In Peru, the arbitrary permeates every stage of the judicial process: from arrest to charge, investigation, trial, sentencing, and appeal.

This arbitrariness is built into the laws by their vague and overbroad definitions of crimes. The terrorism law penalizes he or she who "provokes, creates, or maintains a state of terror, fear, or alarm among the population or a sector of it" or "affects international relations."¹³ As a result, many have been prosecuted for their ideas, including the defense of human rights. For example, the latter clause was used to issue a warrant in 1992 for human rights activist Angélica Mendoza Azcarza, accused of terrorism for her work in support of human rights.¹⁴

The arbitrary nature of the treason law, which includes similarly vague language, was underscored when a Peruvian military tribunal convicted three Chileans for the crime of treason for their support of the "Túpac Amaru" Revolutionary Movement (MRTA) in 1994. As foreigners, they had never sworn allegiance to Peru, a fundamental basis for the charge of treason.¹⁵

Nevertheless, in discussing the verdict, President Fujimori replied to a reporter that the charge was valid, since "it could have been called treason to regional security." He vowed "not to go backwards by one millimeter" despite requests from the Chilean government that the charge be reformulated.¹⁶ The men had already been sentenced to life imprisonment when Fujimori promised that the crime they were convicted of committing would be codified in upcoming legislation.¹⁷ Such an expansive interpretation of a criminal statute violates a cardinal rule of criminal law, that punishable offenses should be clearly defined as such in the law in effect at the time the crime is committed.

President Fujimori made clear his disdain for those who have protested the abuses of the faceless courts on the eve of his departure for the Summit of the Americas held in Miami, Florida, in December 1994. In a public speech, he accused human rights groups of "maintaining a silence" about crimes committed by the Shining Path and working "in complicity" with guerrillas. In a similar vein, Gen. Nicolás de Bari Hermoza, Chairman of the Joint Chiefs of Staff, asserted that human right groups were "accomplices.. of the terrorists' criminal irrationality."¹⁸ The repetition of this kind of baseless smear against Peru's highly respected human rights community has been one of the defining characteristics of the Fujimori regime.

Clearly, Peru is in its right to punish those who violate its laws, and is obligated to protect citizens from violent crime. Yet by promulgating laws that violate fundamental due process rights, protected under both domestic and international law, and by attacking the defenders of human rights, the Fujimori government has made it clear that it is willing to violate rights if its political goals are furthered, with little regard for legality, fairness, or logic.

Arrest, Interrogation, and Torture

Arrest

¹³ Article 2, DL 25475, *El Peruano*, May 6, 1992.

¹⁴ Although Mendoza was never arrested, she remained in hiding for the two years that the case against her remained open. On September 7, 1994, the Supreme Court confirmed a lower court verdict of not guilty. HRW/Americas interview, Peace Study and Action Center (Centro de Estudios y Acción para la Paz, CEAPAZ), Lima, July 18, 1994; Americas Watch, *Human Rights in Peru One Year After Fujimori's Coup*, p. 23; and Letter to HRW/Americas from CEAPAZ, January 24, 1995.

¹⁵ The Commission of International Jurists's report points out that "Treason is universally understood as implying a rupture of the loyalty owed to the nation by its subjects. Indeed, Article 235 of Peru's 1979 Constitution expressly recognized this meaning by limiting the application of the death penalty to treason in the context of *external war*." Commission of International Jurists, *Report on the Administration of Justice*, p. 24.

¹⁶ "Situación de tres terroristas no será reconsiderada," *La República*, January 14, 1994.

¹⁷ Panamericana Television, FBIS, May 19, 1994.

¹⁸ *Resumen semanal*, Center for the Study and Promotion of Development (*Centro de Estudios y Promoción del Desarrollo*, DESCO), No. 793, November 9-15, 1994.

The arbitrary nature of judicial proceedings in Peru becomes plain at the moment of arrest. While some arrests are the fruit of patient and careful police work, many others are based on evidence that is false or in error or procedures that are illegal. For instance, some individuals arrested before these laws were promulgated have been prosecuted under them retroactively, subjecting them to drastic restrictions on the right to a defense and the threat of significantly higher sentences, a violation of the prohibition against the imposition of *ex post facto* laws.¹⁹

- One of the many individuals subjected to the terrorism law retroactively was Michael Soto Rodríguez, the brother-in-law of María Elena Moyano, an activist and vice-mayor of Villa El Salvador murdered by the Shining Path in 1992. Soto was wrongly arrested in relation to Moyano's killing on March 23, 1992. The vague definition of terrorism in the new law allowed authorities to charge him despite a lack of evidence. On December 29, 1994, he was sentenced to twenty years for a crime he most likely did not commit. Soto has been adopted as an Amnesty International prisoner of conscience.²⁰
- Urcesino Ramírez Rojas was arrested on July 27, 1991, after an accused guerrilla fleeing police hid in his doorway. Police claimed that a tape recording made of a speech given by the leader of a legal political party found among Ramírez's belongings constituted proof of his Shining Path militancy. Although arrested well before the terrorism law was passed, Ramírez was prosecuted by a faceless court in 1992, but eventually won release.²¹

The terrorism and treason laws give the security forces, particularly the anti-terrorism police (Dirección Nacional Contra el Terrorismo-DINCOTE), expanded power to investigate terrorism suspects and formulate a criminal charge, previously the responsibility of the investigating judge and public prosecutor. In practice, police often ignore sparse or problematic evidence and charge individuals who have no real participation in guerrilla activities. Typical is the case of seventy-four-year-old Celia Valenzuela, who police accused of helping guerrillas in March 1994 because she gave a visitor money to buy medicines for Valenzuela's two sons, in prison for Shining Path activities.²²

The ramifications of arrest for the detainee are catastrophic. After arrest, he or she is caught in a desperate struggle to avoid being charged by police. Once police formally submit a charge, the prosecutor is obligated to ratify it and order a trial, even if the prosecutor determines that the accused is innocent.²³ Once charged by police, no terrorism or treason suspect is eligible for bail. The case for the defense must be mounted from a maximum-security prison.²⁴

The power to charge has given corrupt police officers a golden opportunity to extort detainees, offering to reduce a charge from treason to terrorism (thereby avoiding summary trial by military tribunal) or dropping charges altogether in exchange for money. Extortion is not only practiced on the detainee, but on family members and friends who visit. Depending on the financial resources of the family, bribes can go from \$50 to \$2,000.

¹⁹ While procedural modifications may be applied retroactively, substantive penal law may not. Article 15 of the International Covenant of Civil and Political Rights expressly guarantees the right not to be held guilty "of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed," a provision echoed in Article 9 of the American Convention on Human Rights. Moreover, defendants have the right to be judged by the courts which hold jurisdiction over their case at the time the crime was committed, not by new court jurisdictions established later.

²⁰ By mid-1995, Amnesty International had adopted over seventy prisoners of conscience in Peru. HRW/Americas telephone interview, Amnesty International-USA, July 4, 1995.

²¹ "De nuevo en campaña," *ideele*, March 1994, p. 43.

²² Valenzuela was released on February 23, 1995. Internal memo, Legal Defense Institute (Instituto de Defensa Legal, IDL), 1994; and "¡Libertad de fiesta!" *ideele*, May-June, 1995, p. 84.

²³ HRW/Americas interview, IDL, Lima, July 19, 1994.

²⁴ Although a modification passed by the CCD in November 1993 theoretically allows the accused provisional liberty, in practice the approval process takes as long as the trial itself, an average of two years. HRW/Americas interview, IDL, Lima, July

- After journalist Hermes Rivera Guerrero was arrested and wrongly accused of belonging to the MRTA in 1992, his wife said police demanded \$500 for his release. When she refused to pay, Rivera was tortured, threatened, charged with terrorism, and sentenced to twenty years.²⁵ In the case of Fernando Assante Alfaro, police actually removed him from prison before he was sentenced and took him to the homes of family and friends to extort money. Assante was later found not guilty.²⁶

Soldiers have also used the threat of a charge to extort money. Detainees at the Tarapoto army base reported that soldiers solicited \$15,000 for three individuals.²⁷

"This first opportunity to negotiate a charge has become a crucial point in the justice system," commented one human rights lawyer.²⁸

Mental incompetence does not spare individuals from arrest.

- Alejandro Julca Huamán, seventy-two, was tried twice on the same charge, having written a document linking him to the Shining Path. When Julca was first questioned, soldiers were looking only for his children. According to his defense lawyer, Julca could not have written any letter because he is not only illiterate but senile. Acquitted the first time, he was sentenced to five years the second time. Every time he greeted his lawyer, it was as a stranger he was meeting for the first time. Julca was eventually acquitted.²⁹

Nor has youth been a protection from the arbitrary justice of the faceless courts. DL 25564 lowered the age of majority in terrorism and treason cases from eighteen to fifteen, meaning that children have also faced life sentences for relatively minor acts. According to the Peace Study and Action Center (CEAPAZ), a human rights group, at least fifty children were tried under these laws or sentenced to prison terms before an April 1995 reform returned the age of majority to eighteen and required youths to be turned over to the juvenile justice system.³⁰ Imposing a life sentence without possibility of release on a child paired with the severe restrictions on due process applied to terrorism and treason defendants is a direct violation of Article 37 of the Convention on the Rights of the Child.³¹

²⁵ HRW/Americas interview, CEAPAZ, Lima, July 18, 1994.

²⁶ HRW/Americas interview, IDL, Lima, July 19, 1994.

²⁷ Letter to HRW/Americas from Jorge Saldaña Pérez, Magno Saldaña Pérez, Humberto Mendoza Paredes, and Jorge Paredes Urquía, March 8, 1993.

²⁸ HRW/Americas interview, IDL, Lima, February 16, 1993.

²⁹ HRW/Americas interview, IDL, Lima, July 19, 1994.

³⁰ HRW/Americas interview, CEAPAZ, Lima, July 18, 1994.

³¹ Article 37a of the Convention on the Rights of the Child expressly prohibits "capital punishment (or) life imprisonment without possibility of release" for children.

- Sixteen-year-old Alfredo Carrillo Antayhua admitted having guarded others as they painted pro-Shining Path slogans on January 20, 1993. After his arrest, however, he told police that he did so after being threatened. He denied knowing anything about the murder of a sailor committed with a gun found on one of his companions. His defense lawyers were prevented from speaking in his defense before the sentence was determined. A military tribunal sentenced him to life in prison on December 10, 1993, Human Rights Day. Following pressure from human rights groups for a review of the case, a new military trial was held, resulting in an acquittal and Carrillo's transfer to the civilian faceless court system to be tried for terrorism. As a result of the April 1995 reform, Carrillo's case was finally forwarded to a juvenile judge for review and he was transferred to a juvenile detention center.³²
- Carlos Morales Balarezo, seventeen, was kept in police detention for a month after being arrested on suspicion of having participated in a bombing of a Peruvian Air Force recruiting center. The repented guerrilla who police say identified Morales later told a judge that he was in error. Morales was tried for treason and found not guilty. As is typical, however, he was not released but was simply transferred to the jurisdiction of the civilian faceless courts to be tried a second time on the same flawed evidence for terrorism. Following promulgation of the April 1995 reforms mentioned above, Morales was turned over to a juvenile court and transferred to a minor's detention center.³³

Regardless of whether or not an individual has been formally charged, DINCOTE often presents them to the press dressed in black and white striped prison suits that heavily suggest their guilt. When Justice Minister Fernando Vega Santa Gadea appeared before the U.N. Committee on Torture in November 1994, he promised to restrict the practice.³⁴ While a law promulgated on January 6, 1995, bars police from displaying those suspected of terrorism, it makes an exception for "leaders, commanders, chiefs, or other equivalents properly identified by the authorities" and suspected of treason. Since many individuals are displayed to the press before charges are made, the law has had the effect of permitting the practice with only minor restrictions.³⁵

In formulating a charge, police routinely ignore variations in the level of involvement of those charged with guerrilla activities. This is possible because the terrorism and treason laws lack clarity, failing to distinguish degrees of complicity in the assignment of penalties and punishing those who commit minor offenses as severely as those who commit murder or other serious crimes. This violates the basic due process principle that the punishment should fit the crime.³⁶ For instance, an individual forced under threat of death to accompany armed guerrillas may be accused of a crime as serious as that of the guerrillas themselves.

- Genaro Cáceres Camones, a laborer tricked into carrying the supplies of a Shining Path band, escaped by giving himself up to an army patrol after an armed clash. Nevertheless, he was tried for treason and sentenced to ten years on November 3, 1993.³⁷

³² HRW/Americas telephone interview with CEAPAZ, July 4, 1995; Letters to HRW/Americas from CEAPAZ, July 18, 1994, January 24, 1995, and July 5, 1995.

³³ Letter to HRW/Americas from the Coordinadora Nacional de Derechos Humanos, December 16, 1994; HRW/Americas interview, Lima, July 21, 1994; and Letter to HRW/Americas from Comisión Episcopal de Acción Social (CEAS), July 4, 1995.

³⁴ *Resumen semanal*, DESCO, No. 795, November 9-15, 1994.

³⁵ HRW/Americas telephone interview with IDL, July 4, 1995; and Letter to HRW/Americas from IDL, January 23, 1995.

³⁶ Commission of International Jurists, *Report on the Administration of Justice*, pp. 22-23.

³⁷ HRW/Americas interview, IDL, Lima, July 19, 1994, and File No. 069-TP-93-L.

Political persecution appears to have been a frequent motive for arbitrary arrest on treason and terrorism charges. Repeatedly, well known activists belonging to legal political parties have been arrested for alleged guerrilla activities. For example, in October 1993, thirty-seven members of the United Left party in Huaraz were arrested and charged with terrorism. Peruvian human rights groups believe the arrests stemmed from their campaign to encourage a no vote that month on the referendum to adopt a new Constitution.³⁸

In some cases, inefficiency, neglect, or carelessness is at the root of an arrest. Instead of carrying out thoughtful investigations, police often arrest those they can easily catch. On repeated occasions, police have arrested individuals unlucky enough to share a name with a suspected guerrilla wanted by police.

- Juana Quispe Rojas, a maid, was arrested in March 1993 on a warrant for an obstetrical student who shared the same name. According to the Legal Defense Institute (Instituto de Defensa Legal, IDL), a human rights group, there are ten women registered to vote in Peru as Juana Quispe Rojas. Despite Supreme Decree No. 035, promulgated in August 1993, which requires that individuals arrested because of homonyms be remanded to a judge for release within fifteen days, victims of this abuse, like Juana Quispe, remain in prison. She is currently serving a twenty-year sentence.³⁹

In other cases, police have promised to release a suspect if the family members provide false testimony, used then to formally charge the suspect.

- After Carlos Delgado Altamirano was arrested on November 18, 1992, police told his wife and uncle that they would release him if they signed a statement asserting that Delgado had been a law student of Martha Huatay, a Shining Path leader and former president of the Association of Democratic Lawyers, which defended many Shining Path members. Although Huatay never taught at Delgado's law school, the deposition was used to charge Delgado with terrorism. Delgado was eventually found innocent and with his wife fled Peru. Subsequently, the faceless prosecutor appealed the court's decision and sought Delgado's arrest again.⁴⁰

Others face a potential life sentence because a family member wanted for arrest was not found.

- Carmen Soledad Espinoza Rojas, whose husband was wanted by police on suspicion of having participated in the June 1993 murder of a community leader in the "Laura Caller" settlement in the Lima neighborhood of Los Olivos, was arrested in September 1993. Although no evidence links Espinoza to the crime, and a military tribunal acquitted her and five others, she remains in prison awaiting a final decision from a military appeals court.⁴¹

Casual, accidental, or professional contact with those suspected of guerrilla activities has also led to arrest. Repeatedly, individuals observed by police chatting with suspected guerrillas, buying merchandise from them, or providing normal services have been prosecuted as collaborators.

³⁸ Most were released a year later. "El valor de la libertad," *ideele*, November 1993, p. 41.

³⁹ Miguel Díaz, "La desgracia de un nombre," *La República*, February 20, 1994; and "De nuevo en campaña," *ideele*, March 1994, p. 43.

⁴⁰ "Observando las Leyes," *Caretas*, February 18, 1993, pp. 28, 30-32; and Letter to HRW/Americas from APRODEH, January 25, 1995.

⁴¹ Letter to HRW/Americas from CEAPAZ, July 18, 1994, and January 25, 1995; and HRW/Americas interview, CEAPAZ, Lima, July 18, 1994.

- Juan Mallea Tomaila, a taxi driver, was arrested on July 10, 1993, after depositing a paying customer outside a Lima address. Unknown to Mallea, the house was used to edit the Shining Path newspaper *El Diario*. After suffering severe torture at the hands of DINCOTE agents, Mallea learned that he was being accused of drafting a map showing the location of the graves left by the soldiers who had carried out the La Cantuta disappearance, a map he said he did not know. Several times before Mallea's trial concluded, President Fujimori declared to the press that Mallea was guilty, a clear invasion of the powers of the judiciary. "I have looked into the innocence or guilt of Mallea," he told journalists on September 5, 1993, "and the handwriting examinations (of the map) prove his guilt without a doubt." However, several handwriting examinations, including one practiced by a former Federal Bureau of Investigations agent at the request of Human Rights Watch/Americas, showed that Mallea could not have written the map. Nevertheless, he remained in prison for ten months before being declared innocent. During his detention, Mallea was declared an Amnesty International prisoner of conscience.⁴²

Police continue to detain and charge doctors for providing medical services to guerrillas even though such arrests violate international humanitarian principles regarding medical neutrality. These arrests also contradict Article 5 of Peru's Medical Work Law, which holds that doctors who have performed medical services cannot be arrested for those services regardless of the circumstances in which they were performed.⁴³

- Police accused Dr. Luís Polo Rivera, a traumatologist arrested on November 4, 1992, of belonging to the "Popular Help" (Socorro Popular) wing of the Shining Path, because he had amputated the foot of a guerrilla wounded by a land mine. Although his lawyers were prevented from seeing the testimony of the two repented guerrillas who claimed to identify Dr. Polo in a lineup, it was later learned that their testimony had been obtained under torture and that police had forced them to incriminate him. The wounded guerrilla publicly retracted his identification of Dr. Polo, which he says he was forced to make without his eyeglasses. Nevertheless, Dr. Polo was sentenced to life in prison by a military tribunal. Two years later, the sentence was overturned on appeal and Polo was released.⁴⁴

In other cases, police have used arrest to revenge themselves on those they deem dangerous, suspicious, or uncooperative. The vague and overbroad definitions of terrorism makes these abuses possible.

- Vengeance may have prompted police to arrest Dr. Pedro Alfonso Guerrero de Luna. Employed by the men's prison in the city of Piura, Guerrero de Luna says he refused to falsify medical examinations of prisoners subjected to torture by police. On November 24, 1992, he was arrested, according to police because he aided a wounded guerrilla. His family, however, maintains Guerrero de Luna was at a birth that night. After spending two years in prison, Guerrero de Luna was declared innocent in July 1994.⁴⁵

⁴² Carlos Landeo, *177 casos de injusticia y error judicial en el Perú* (Lima: IDL, January 1994), pp. 29-31; "Que mi sufrir sirva a los inocentes," *ideele*, May 1994, pp. 30-31; and "La Pasión Según Mallea," *Caretas*, February 24, 1994.

⁴³ 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 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. Nonetheless, there is an obligation under Peruvian domestic law (Article 407, Penal Code) that individuals (including medical professionals) with knowledge of the commission of a crime report it to the authorities. This crime carries a maximum sentence of four years in prison. We believe this is the only crime for which health professionals who have assisted guerrillas could reasonably be prosecuted.

⁴⁴ Americas Watch, *Human Rights in Peru One Year After Fujimori's Coup*, p. 29; "Casos Dudosos," *Caretas*, January 21, 1993, pp. 40-43, 48; *Informe de la Misión al Perú de la Asociación Americana para el Avance de la Ciencia* (Lima: APRODEH/Federación Médica Peruana, February, 1994), pp. 10-12; and Letter to HRW/Americas from APRODEH, January 25, 1995.

⁴⁵ HRW/Americas interview, Guerrero de Luna family, Pisci, department of Lambayeque, July 25, 1994.

The army also engages in politically motivated arrests.

- Delia Falcón de Julcarima witnessed gross abuses of human rights — including the murder of her husband — committed by the army during its "Operation Aries" in April 1994 in the Upper Huallaga Valley. Her testimony against the army received wide press coverage, and may have motivated the army to arrest her at her home on February 10, 1995, in the hamlet of Anda. Soldiers took her to a local military stockade and beat her, then transferred her to the "Los Laureles" military base in Tingo María. On February 15, she was transferred to the police station in Tingo María. After several days detention, she was released without charge. Her detention was based on the statement of another detainee, who alleged that Falcón had provided food to members of the Shining Path.⁴⁶

Human Rights Watch/Americas also received cases suggesting that police bribed by landowners have arrested tenants suing for promised compensation for work.

- After he sued a landowner who had promised to give him a plot in exchange for twenty-four years of farm work, Elías Mendoza Torres was arrested on December 6, 1991, and accused of organizing meetings for the Shining Path. The landowner who accused him offered no evidence to back up this claim. Nevertheless, Mendoza was prosecuted retroactively under the terrorism law and spent thirty-three months in prison before being declared not guilty in September 1994.⁴⁷

Interrogation and Torture

Police are legally allowed to hold detainees suspected of terrorism for up to a month incommunicado, although they must notify a judge and a representative of the Public Ministry within twenty-four hours of the arrest and must ask for permission to extend the initial fifteen-day detention period for an additional fifteen days.⁴⁸ Theoretically, treason suspects can be held indefinitely, though in practice detention does not last more than thirty days.⁴⁹ Although the prosecutor is supposed to be present for all police interrogations, to protect detainees from mistreatment, this is often not the case. Information we received suggests that many prosecutors simply put their official stamp on depositions after police have forced the detainee to sign.⁵⁰ Prolonged incommunicado detention is incompatible with Articles 7 and 9 of the American Convention on Human Rights and the International Covenant on Civil and Political Rights, respectively.⁵¹

Until the April 1995 reform restored the right to counsel from the moment of arrest, detainees were denied access to attorneys during interrogation. Defense counsel was allowed only after police decide to take a formal declaration.⁵² Even so, some detainees told us that they were not allowed to call in a defense lawyer, nor was a public defender provided as required during the deposition.

⁴⁶ Letter to HRW/Americas from IDL, February 21, 1995; interview with IDL, July 6, 1995.

⁴⁷ Letter to HRW/Americas from CEAPAZ, July 18, 1994, and January 24, 1995.

⁴⁸ Letter to HRW/Americas from IDL, February 21, 1995.

⁴⁹ Commission of International Jurists, *Report on the Administration of Justice*, p. 39.

⁵⁰ HRW/Americas interview, CEAPAZ, July 18, 1994. Letter to HRW/Americas from detained soldier Daniel Aramburú Altamirano, March 15, 1993.

⁵¹ Commission of International Jurists, *Report on the Administration of Justice*, p. 30.

- After his arrest in the hospital where he was doing rounds, medical student Osmar Rafael Bonilla Estrella told us he was kept for twenty days blindfolded in a police cell, accused of having directed a support organization for the Shining Path. Although he denied the charge, Bonilla says he was forced to sign a confession, was denied access to a lawyer, and no public defender or prosecutor was provided to him.⁵³

In one case, individuals say they were forced by soldiers to hold a pen in their hands, then manipulated to fake a signature to a prepared confession.⁵⁴

Lengthy incommunicado detention and restrictions on the right to counsel are an open invitation for abuse by the police. Although Peru signed the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 1988, credible reports have abounded of police torture in the days after arrest.

Of forty-four letters we received in April 1993 from individuals charged with terrorism at Picsi Prison, in the department of Lambayeque, over half contained serious allegations of torture. Each of the seventy-seven detainees interviewed by the Coordinadora during a September 1994 visit to Picsi reported having suffered torture during the first days following their arrests.⁵⁵ Human Rights Watch/Americas has also received reports that prisoners have been beaten when they were transferred from prison to the cells in the Lima Palace of Justice, where detainees can be kept before being called to hearings.⁵⁶

During incommunicado detention, police have coerced, threatened, tortured, and raped detainees, some who have confessed to crimes they did not commit.⁵⁷ Torture has included beatings, electric shocks, near-drownings, rape, rape with rifles, prolonged suspension by the arms bound behind the back, and death threats. Under torture, some detainees have given police names of individuals they know are innocent, in an attempt to convince their torturers that they are collaborating. The Coordinadora has also received reports of police torture of individuals in front of other detainees, a brutal form of intimidation.⁵⁸

The army has also been implicated in the torture of detainees. Especially in rural areas, access by the Public Ministry to detainees in army custody remains limited, since army patrols often keep their prisoners in local bases or unreported locations.

⁵³ Letter to HRW/Americas from Osmar Rafael Bonilla Estrella, March 15, 1993.

⁵⁴ Letter to HRW/Americas from Jorge Saldaña Pérez, Magno Saldaña Pérez, Humberto Mendoza Paredes, and Jorge Paredes Urquía, March 8, 1993.

⁵⁵ Rosa Mujica, "Se condena, no se juzga," *ideele*, October 1994, p. 42.

⁵⁶ Declaration by Natividad Diovilda Pomacaja Quiñonez, uncle of arrestee Urbano Unocc Pari, to Navy Judge, File No. 011-TP-93.

⁵⁷ Among them is Virginia Lucero Calderón, who was raped and beaten after her arrest by police on August 25, 1993, apparently after a personal vendetta escalated into accusations that her husband was a guerrilla. Police forced her into signing a confession she never read. Lucero was eventually released. APRODEH, "Yo no puedo ver sol, Yo no puedo ver candela," February 1994, pp. 15-16.

⁵⁸ Coordinadora, "Report from the Coordinadora on visits to Chiclayo, Piura, and Chulucanas, March 7-11, 1994," Human Rights Watch/Americas July 1995, Vol. 7, No. 9

- In Sihuas, department of Ancash, members of a peasant patrol organized to defend their community from robbery and official abuses were harassed by army officers who had set up a base there in December 1993. Apparently, officers wanted to force them to conform to a 1993 law putting the patrol under army command. On March 20, 1994, soldiers detained patrol members Francisco Alejos, Tomás Espinoza, Zacarías Zavaleta, and Roger Córdova, holding them incommunicado for ten days. Alejos said he was taken to Tlacocha Lake, where he was submerged in freezing water and threatened with death. Sticks of dynamite were tied to his body and put in his mouth, lit, then extinguished. His pubic hair was burned. Repeatedly kicked as shots were fired in the air, he was forced to drink water mixed with detergent and a firearm was put into his mouth. As he was taken to a hospital, a soldier told him not to mention the torture and to say that he was spitting blood because of tuberculosis. Transferred to the custody of the anti-terrorism police and maintained incommunicado, he was again tortured. Before his release, Alejos was declared an Amnesty International prisoner of conscience.⁵⁹

On repeated occasions, detainees have been forced under torture and threat of death to sign confessions prepared by soldiers. At the "Los Laureles" military base in Tarapoto, department of San Martín, the torture of young men accused of belonging to the MRTA was reported to continue for as long as eighteen days, in daily sessions of up to five hours.⁶⁰ In one case, a detainee was told that if he reported torture to visitors from the International Committee of the Red Cross (ICRC) he would be killed.

- After his arrest by an army patrol in Tarapoto, on April 21, 1992, weeks before the terrorism law was promulgated, twenty-four-year-old César Luis Ramírez Yalta says soldiers subjected him to torture for twelve days in five-hour daily sessions, including beatings, electric shocks, near-drownings, and threats that he would be "liquidated." Ramírez was later forced to sign a confession drawn up by soldiers, which he later disavowed. Nevertheless, he was charged with terrorism and at the time of writing the letter to us had been in prison for eleven months. Amnesty International has declared Ramírez a prisoner of conscience.⁶¹

We are not aware of a single case in which an agent of the state has been brought before a civilian court and punished for having carried out torture. In a November 1994 statement before the U.N. Committee Against Torture, Justice Minister Vega claimed that between 1986 and 1993, 108 officers and 453 noncommissioned officers (*suboficiales*) had been punished by military courts for having practiced torture. Of that number, he said twenty-eight officers and 151 noncommissioned officers had been given prison terms.⁶²

Because of the secrecy of military court proceedings and decisions, it is virtually impossible to corroborate the minister's statement. In the few cases known to the Coordinadora, investigations concluded with military courts asserting that the allegations were not proven and therefore no punishment was merited.⁶³ When the U.N. Committee against Torture reviewed Peru's report on implementation of the Convention in November 1994, it found that the Fujimori government had failed to prevent acts of torture or to carry out their prompt and impartial investigation.⁶⁴

⁵⁹ Letter to HRW/Americas from the Ecumenical Foundation for Development and Peace (*Fundación Ecuémica para el Desarrollo y la Paz*, FEDEPAZ), April 11, 1994.

⁶⁰ We received reports of torture carried out by soldiers in San Martín from César Luis Ramírez Yalta and five other young men, one of whom said soldiers raped him with a rifle barrel. Letters to HRW/Americas from Juan José Cholán Ramírez, César Luis Ramírez Yalta, Jhon Fernando Vidaurre Fasando, April 1993; and letter to HRW/Americas from Jorge Saldaña Pérez, Magno Saldaña Pérez, Humberto Mendoza Paredes, and Jorge Paredes Urquía, March 8, 1993. Vidaurre was later found innocent of terrorism. Letter to Supreme Court President Luis Serpa Segura from APRODEH, February 10, 1994.

⁶¹ Letter to HRW/Americas from César Luis Ramírez Yalta, April 1993.

⁶² DESCO, *Resumen semanal*, No. 795, November 9-15, 1994.

⁶³ Letter to HRW/Americas from IDL, January 23, 1995.

⁶⁴ "Anti-terrorist legislation discussed as rights committee takes up report of Peru on observance of Convention against Torture," U.N. Information Service, HR/4058, November 9, 1994; and "Measures Against Practices of Torture in Peru Are Not Efficient, Committee Determines," U.N. Information Service, HR/4059, November 11, 1994.

Declarations made under torture are routinely accepted as evidence in faceless trials.⁶⁵ Referring to the high incidence of torture, José Rogelio González López, president of the Lambayeque Superior Court and responsible for the busiest faceless system in the country, deemed it "not just bad, but atrocious." González told Human Rights Watch/Americas that many guilty verdicts handed down by his court are probably illegal because of their reliance on testimony obtained under torture. Although González oversees the work of Chiclayo's faceless judges, he claims he is unable to always correct errors and cannot interfere with court proceedings.⁶⁶

Despite often glaring evidence of torture — bruises, broken bones, bleeding, even pregnancy from rape — the prosecutors charged with investigating such treatment rarely do so.

- After an international campaign, the CCD human rights commission undertook an investigation into the rape by DINCOTE agents of María de la Cruz Pari, a twenty-year-old who gave birth while in prison. De la Cruz had gone voluntarily to DINCOTE on January 6, 1993, to testify on behalf of a family member accused of belonging to the Shining Path. Instead, she was arrested and held incommunicado. De la Cruz later charged that between January 7 and 10, she was blindfolded and taken to a beach south of Lima along with five other female prisoners. There, they were raped repeatedly and tortured with near-drowning. Doctors later confirmed that De la Cruz conceived while in police custody. De la Cruz was acquitted of treason, but her case was referred to a civilian faceless court and she was sentenced in November 1994 to twenty years. The case is currently being appealed. The CCD investigative commission never published its findings.⁶⁷

Often, detainees decline to report ill-treatment because of threats from their former torturers. Even when reports are made, however, prosecutors and judges rarely take them seriously and order investigations. According to the Coordinadora, the few prosecutors and judges who investigate reports of torture usually do so well into a trial, long after physical evidence has disappeared.⁶⁸

The police Internal Affairs division (Inspectoría) lacks the staff, budget, and, most importantly, political backing to investigate allegations of police torture, corruption, and other misdeeds. Despite the desire of some police officials to pursue such investigations, there is a clear and pervasive willingness to tolerate abuses visible at the highest levels of the police force.

"The commanders themselves hide abuses," we were told by a high-level police source who requested anonymity. "The example is set by those at the very top."⁶⁹

Trial and Sentencing

Access to Counsel

⁶⁵ Coordinadora, "Report from the Coordinadora on visits to Chiclayo, Piura, and Chulucanas, March 7-11, 1994."

⁶⁶ HRW/Americas interview, José Rogelio González López, Chiclayo, July 25, 1994.

⁶⁷ "El doble drama de María de la Cruz," *Vistos y Considerando: Revista especializada en Derecho*, July-August 1994, pp. 32-33; and HRW/Americas telephone interview, National Committee of Families of the Detained, Disappeared, and Refugees (Comité Nacional de Familiares de Detenidos, Desaparecidos y Refugiados, COFADER), December 16, 1994.

⁶⁸ Coordinadora, "Report from the Coordinadora on visits to Chiclayo, Piura, and Chulucanas, March 7-11, 1994."

⁶⁹ HRW/Americas interview, Lima, July 19, 1994.

As noted above, access to counsel has been severely limited during the period of incommunicado detention. This fundamental due process right is also abridged during the trial phase. The legal prohibition on attorneys from representing more than one terrorism or treason defendant at one time, in force between May 1992 and November 1993, left most defendants in the hands of public defenders. Even after the law was amended to allow attorneys to represent multiple terrorism defendants, the flood of arrests has completely overwhelmed the small pool of human rights attorneys, while the costs of private lawyers are prohibitive for most defendants.⁷⁰

Although there are some notable exceptions, most public defenders appear to take lightly the task of defending clients.⁷¹ Repeatedly, we were told that public defenders do not even interview their clients, illegally sign depositions without having their clients present, and show up for trial dates without having prepared a defense.⁷²

Neglect is not limited to the public defenders, however. While some may have a genuine interest in practicing law, they are often not paid properly or given official support. For instance, although by law the state prefect is required to name and pay public defenders, in Lambayeque the court itself had to contract lawyers in 1994 after repeated requests to the prefect, appointed by the executive to oversee state affairs, went unanswered. Without a budget for salaries, the court president told us in July, he had not been able to pay public defenders for the past three months.⁷³

To the accused, then, having a private lawyer is key to a successful defense. Lawyers who assumed these cases were themselves targeted for harassment and accusations of guerrilla sympathies. During the period when lawyers were barred from representing more than one terrorism defendant at a time, some courageous lawyers took on multiple cases in defiance of the law, risking arrest and prosecution themselves.⁷⁴

Although this restriction has been lifted, few lawyers are willing to take up treason or terrorism cases due to the stigma attached to them. Some lawyers fear that even possession of case material in their offices — for instance, literature deemed subversive — would subject them to arrest under the terrorism law.⁷⁵ In February 1994, antiterrorism police asked the regional bar associations of the states of Piura and Tumbes, in northern Peru, to provide them with information about 285 defense lawyers included on a secret list.⁷⁶ Human rights lawyers as well as known criminal defense lawyers were included, in what many believed was an attempt to frighten them away from defending individuals charged with treason or terrorism.⁷⁷

⁷⁰ HRW/Americas interviews, IDL, CEAPAZ, APRODEH, Lima, July 18-21, 1994.

⁷¹ One exception is Sara Ciurlizza, a public defender in Chiclayo. A dedicated and tireless lawyer, she gave up a lucrative private practice to defend hundreds sent before the faceless court that covers northern Peru.

⁷² HRW/Americas interviews, IDL, CEAPAZ, APRODEH, Lima, February 16-18, 1993; Vicaría de Juli and Puno and CODEH-Puno, Puno, February 22-25, 1993; and Norbel Mondragón and Sara Ciurlizza, Chiclayo, July 24-26, 1994.

⁷³ HRW/Americas interview, José Rogelio González López, President of the Superior Court of Lambayeque, Chiclayo, July 25, 1994.

⁷⁴ HRW/Americas interviews, IDL, CEAPAZ, APRODEH, Lima, February 16-18, 1993; and Norbel Mondragón, Chiclayo, July 24, 1994.

⁷⁵ Petition to the Peruvian Bar Association from twelve defense lawyers, February 1993.

⁷⁶ Oficio 207 to the Decano del Colegio de Abogados Piura y Tumbes from Colonel Alfonso Chávarry, DIVCOTE-Piura, February 10, 1994.

⁷⁷ Letter to HRW/Americas from FEDEPAZ, March 23, 1994.

In the year after the terrorism and treason laws were passed, two lawyers belonging to the Democratic Lawyers Association which defended members of the Shining Path were arrested and accused of having in their possession an alleged list of people whom the Shining Path planned to murder. However, the list was apparently delivered to Jorge Cartagena, president of the Association, by a man working with army intelligence. Later allegations that the list was fabricated to entrap the men were never fully investigated, raising the strong possibility that the men were persecuted for practicing their profession. Both Cartagena and attorney Alfredo Crespo were subsequently prosecuted for treason and sentenced by a military tribunal to life in prison.⁷⁸

Under the faceless military and civilian systems, the defense is under numerous restrictions that violate the right to fair trial. Prime among them is the secrecy that often shrouds evidence against the accused, often kept from the defense. The defense is not allowed to know the identity of secret prosecution witnesses, often individuals claiming to be repented terrorists, or question them independently. Specifically prohibited is access by the defense to the police or military officers responsible for collecting evidence against the accused or for testifying against the accused.⁷⁹

Reviewing the charges and evidence is especially difficult in treason trials, presided over by military tribunals. Often, defense lawyers are given less than twenty-four hours notice for hearings, held in locations often more than a day's drive away. Access to the case file, even a record of the evidence gathered, is often denied.⁸⁰

To see their client's case file, lawyers must submit a written request to the office of the chief judge. While occasionally judges respond positively and in a timely manner, just as often the defense never receives a reply. In the latter case, defense lawyers in Lima told us that they can bribe clerks with sums of between \$40.00 to \$50.00 to secretly provide photocopies that normally would cost \$10.00. In other cases, after going to collect the paperwork, lawyers have discovered that the case has been sent to a distant jurisdiction.⁸¹

An interview with a client implies a lengthy trip to prison and the room where a meeting can take place. Prison authorities allow lawyers only fifteen minutes of interview time, whether dedicated to one client or divided between several. In Lima's Castro Castro Prison, lawyers and their clients must converse in one of five cabins located in plain view of other lawyers, prisoners, and guards. Conversations — shouted and hurried — take place through a thick glass, with no opening. Often, prison authorities deny lawyers access to their clients unless the lawyer can prove with an official judicial document — very difficult to get — that a sentence is being appealed, even when a client is attempting to prove their innocence before a sentence has been handed down.⁸²

"Every one competes in shouts and gestures, and all conversations cross and mix in a Tower of Babel apotheosis," commented two lawyers writing about their experiences for a Lima magazine.⁸³

These restrictions on the defense, the Commission of International Jurists concluded, "makes that task all but futile and relegates defenders... to playing a largely symbolic role in the trial proceedings."⁸⁴

⁷⁸ Americas Watch, *Human Rights in Peru One Year After Fujimori's Coup*, pp. 28-29.

⁷⁹ DL 25475, Article 13(c); DL 25744, Article 2(b).

⁸⁰ According to law, notifications must be given forty-eight hours before a hearing. This provision is often violated. Petition to the Supreme Court by four defense lawyers, February 18, 1993.

⁸¹ HRW/Americas interview, CEAPAZ, Lima, July 18, 1994.

⁸² Letter to Justice Minister Fernando Vega Santa Gadea from IDL, June 6, 1994.

⁸³ Carlos Landeo and Eduardo Vega, "Avatares de la defensa: Castro-pampa," *ideele*, July 1994, pp. 33-34.

⁸⁴ Commission of International Jurists, *Report on the Administration of Justice*, p. 33.

Those attorneys experienced in defending terrorism and treason cases are seriously overburdened. Many desperate families go to human rights groups, some of whom offer free legal advice and representation. Ironically, sometimes the accused are referred to human rights groups by judicial employees, police, and prison guards convinced of their innocence.⁸⁵

Human rights groups have been inundated with cases. For example, the IDL, with a team of six lawyers, received 495 requests for service in 1994. Of those, thirty individuals were charged with treason while the rest were charged with terrorism.⁸⁶ Like other members of the Coordinadora, the IDL evaluates each case before assuming it, so as to represent only those believed innocent of the charges against them.⁸⁷

Since the terrorism and treason laws were passed, human rights groups allied in the Coordinadora have represented over 700 innocent people, a figure which represents a small percentage of the pleas for help they receive.⁸⁸

Some unscrupulous lawyers seek out families anxious to free a loved one, take their money in dollars up front, then disappear. Families who suffered this treatment were not aware of any mechanism available to report unethical behavior or punish it. Although the Lima Bar Association has a Code of Ethics and an Honor Committee established to review charges of misconduct, it is rarely invoked and many consider it ineffectual.⁸⁹

- After Gustavo Rebolledo was arrested, his family was approached by two lawyers who promised to "get Gustavo out," for \$4,000 and \$2,000 respectively, offers the family did not accept. A third lawyer hired by the family charged \$700, but was prohibited from assuming the case since he was already representing another client charged with terrorism. The fee was not returned. Finally, the family convinced their local priest to appeal to a church-linked human rights group on Gustavo's behalf.⁹⁰

Terrorism Cases: Civilian Faceless Courts

Once police formalize a charge, the prosecutor must pass it to the investigative judge (*juez instructor*), who opens a case. Upon completion of the investigation, the judge sends the case to a *fiscal superior sin rostro* (faceless prosecutor), who can either confirm or contradict the investigative judge's opinion on the guilt of the defendant. Even if the prosecutors or investigative judge believe the defendant is innocent, however, Article 13 of the terrorism law prohibits them from releasing the defendant or ruling on any preliminary objections or other motions by the defense, forcing the case to travel the entire length of the judicial system. The case must go before a *tribunal superior sin rostro*, a panel of three faceless judges, who determine the final verdict.⁹¹

Often, defense lawyers say, prosecutors and judges signal their belief that a defendant is innocent by phrasing their reports as what is known as a "formal accusation," without presenting supporting evidence. However, this does not guarantee an acquittal.

⁸⁵ HRW/Americas interview, IDL, Lima, July 19, 1994.

⁸⁶ Letter to HRW/Americas from IDL, January 23, 1995.

⁸⁷ HRW/Americas interview, IDL, Lima, July 19, 1994.

⁸⁸ *Resumen Semanal*, FBIS, April 25, 1995.

⁸⁹ Letter to HRW/Americas from the Coordinadora, December 16, 1994.

⁹⁰ HRW/Americas interview, Raúl Rebolledo (brother), Pisci, department of Lambayeque, July 26, 1994.

⁹¹ Article 13, DL 24575. According to DL 26447 of April 1995, the magistrates handling terrorism cases in the civilian court system will no longer be anonymous as of October 15, 1995.

- Twenty-year-old Elmer Vilcara Gamarra was detained in 1993 by DINCOTE, accused of belonging to the Shining Path based on a pamphlet found in his room distributed by the Unified Education Workers' Union, a legally-recognized teacher's union. In addition, Vilcara's name appeared on a list written by another detainee accused of belonging to the Shining Path. Unaware of his arrest, his family saw Vilcara presented to the press in a striped convict's uniform as they watched the nightly news after a family birthday party. Although the prosecutor made only a formal accusation against Vilcara since there was no proof of guerrilla activity, Vilcara was sentenced to twelve years in prison. In their conclusions, the faceless judges said Vilcara was proven guilty by the testimony of two others, testimony in which neither Vilcara's name nor allusions to him appear. Vilcara was acquitted on appeal.⁹²

Far from experienced in criminal law, Peru's faceless judges are drawn from all branches of the judicial service, including courts specializing in land disputes, civil cases, and agrarian law.⁹³ Both prosecutors and judges work under direct pressure from the executive, which can name and fire them at will as long as they remain provisional employees.⁹⁴ As a result, political pressures to accuse, even without evidence, can be intense. Before declaring a charge unfounded, judges and prosecutors must make a candid evaluation of the cost both professional and political.⁹⁵

In some jurisdictions, family members and lawyers suspect that judges and prosecutors do not read case files or do so in a cursory manner, and instead recommend guilty verdicts for everyone regardless of the evidence. In several cases we examined, the only reasonable explanation for the recommendation of a guilty verdict is that neither the judge nor the prosecutor noted a lack of evidence or the determinations on the part of other officials that the individual was innocent. This violates a fundamental tenet of international law, that the burden of proving guilt lies with the state. The case of Gustavo Rebolledo in the Chiclayo-based jurisdiction covering northern Peru, is illustrative.⁹⁶

- The investigative judge who reviewed the police accusation against Gustavo Rebolledo submitted a written apology for concluding that Rebolledo was guilty, a mistake made, the judge said, because the case was over 3,000 pages long and he had neglected to read it carefully. However, the faceless prosecutor who reviewed his opinion in preparation for the hearing before the faceless panel apparently did not read the judge's apology and recommended a guilty verdict. Luckily, Rebolledo's defense was able to alert the panel to the mistake and Rebolledo was acquitted after spending twenty-nine months in prison.⁹⁷

In a similar manner, the Commission of International Jurists found that investigative judges often fail to make the detailed reports on their proceedings required by law, and simply forward to the faceless panel a statement repeating the conclusions in the police report. The Commission speculated that this passivity was due to the fact that investigative judges fear for their jobs, so compromise their objectivity and independence by trying to appear pliant.⁹⁸

⁹² Letter to HRW/Americas from IDL, June 7, 1994 and December 16, 1994; and "Viacrucis de un inocente," *ideele*, December 1994, p. 72.

⁹³ HRW/Americas interview, IDL, Lima, July 19, 1994.

⁹⁴ After President Fujimori led the April 5, 1992 coup, he fired judges and prosecutors and placed the entire judicial branch under executive control. Although two official bodies have been naming permanent employees to replace provisional ones since March 1993, as of the writing of this report the task remains far from finished. For more, see the section on "Attempts at Reform."

⁹⁵ HRW/Americas interview, IDL, Lima, February 16, 1993.

⁹⁶ HRW/Americas interview, IDL, Lima, July 19, 1994.

⁹⁷ HRW/Americas interviews, Raúl Rebolledo and Norbel Mondragón, lawyer, Pisci, July 26, 1994.

⁹⁸ Commission of International Jurists, *Report on the Administration of Justice*, p. 32.
Human Rights Watch/Americas

"In practice," points out Father Hubert Lanssiers, a Belgian priest who acts as an unofficial link between human rights groups and President Fujimori, "it appears often that nothing happens between the formulation of the police report and the sentence: no critical reading of the case, no presentation from the defense, no depositions from witnesses."⁹⁹

As the Coordinadora noted after one visit to the Chiclayo-based faceless court, "Seven-year sentences to life imprisonment have been given by magistrates who learned of the cases just hours before sentencing, without an exhaustive analysis of the evidence presented."¹⁰⁰ In repeated instances, human rights groups have found that political developments entirely separate from individual cases — for instance, a scandal involving the release of a confessed guerrilla or a spate of newspaper articles about judicial inefficiency — have influenced prosecutors and judges, prompting them to emit guilty verdicts even when the accused is clearly innocent.¹⁰¹

Unlike military tribunals, where summary trials take place immediately after arrest, civilian faceless courts experience prolonged pretrial delays. Many are due to incoherences within the laws, leading to confusion on where cases stand and who is authorized to emit key decisions.¹⁰²

Other delays stem from the court's lack of funds.¹⁰³ Repeatedly, trials have suffered months of delay because the court cannot afford to transport the prisoner from the prison where he or she is held to the location of the court that has jurisdiction over the case. Even when the distances are not large, the accused are required to travel by air with three guards for security reasons. When a case involves many defendants, as most do, the cost of transporting them can run into the thousands of dollars. Unwilling or unable to foot this bill, the courts have instead opted to delay trials indefinitely or declare a mistrial, forcing the proceeding to begin anew. In the Lambayeque courts, funds were so short in July 1994 that court clerks threatened to strike unless they received pay, suspended for the previous four months.¹⁰⁴

- Elsa Tenorio Torrejón, a store owner accused of giving food to members of the MRTA, was implicated in a case involving several others. While Tenorio was held in the Santa Mónica Women's Prison in Lima, her case file was in Chiclayo, on Peru's northern coast, more than an hour's flight time away. Despite the offer of one human rights group to pay her ticket to Chiclayo to stand trial, the Chiclayo judge threatened a mistrial because Tenorio wasn't present. A mistrial means the entire proceeding must begin anew. Tenorio, who gave birth while imprisoned, is allowed to see her infant daughter once every six months. At the end of 1994, Tenorio was moved to a prison much closer to Chiclayo; however, her case was returned to Lima. On May 26, 1995, her case was returned to Chiclayo for trial.¹⁰⁵

⁹⁹ Father Hubert Lanssiers, "¿Existe ley que pueda legitimar tanto dolor?" *ideele*, October 1994, pp. 43-44.

¹⁰⁰ Coordinadora, "Report from the Coordinadora on visits to Chiclayo, Piura, and Chulucanas, March 7-11, 1994."

¹⁰¹ HRW/Americas interview, Norbel Mondragón, Pisci, July 26, 1994.

¹⁰² Commission of International Jurists, *Report on the Administration of Justice*, p. 32.

¹⁰³ A lack of sufficient operating funds is nothing new to Peru's courts. A 1989 study by the Andean Commission of Jurists concluded that budget shortfalls directly affected the independence of Peru's judiciary.

¹⁰⁴ HRW/Americas interview, José Rogelio González López, President of the Lambayeque Superior Court, Chiclayo, July 25, 1994.

¹⁰⁵ HRW/Americas interview, Lima, July 21, 1994; December 22, 1994; and Letter to HRW/Americas from CEAS, July 4,

The work of the faceless courts takes place in specially-conditioned rooms within maximum-security prisons. The panel of judges sits behind a one-way panel of glass, and speaks through microphones that distort their voices. No family members or outside observers are allowed inside.¹⁰⁶

Occasionally, trials are suspended without notice because the microphones don't work, or a prosecutor is reported ill, or the judges were simply unable to finish reading the case material. While some delays are inevitable, the frequency of such unexplained delays is suspicious and has led some observers to believe that the court is delaying a verdict for political reasons. No effort is made to explain delays or even provide families with minimal facilities during the wait. Outside Pisci Prison, families keep vigil on a patch of desert one mile from the prison gate, with no shelter, restroom facilities, or privacy to consult with lawyers once they have made the long walk from the courtroom.¹⁰⁷

In one incident we observed, families waited for over eight hours for news of a verdict. Inside, we learned later, the accused had been kept in a special holding cell and had not received food or water. As night fell, the men were finally informed that the hearing was suspended because of a reported microphone malfunction.¹⁰⁸

Sometimes, a mistrial is declared based on procedural errors, forcing the case to begin anew. For the innocent, a mistrial is a mixed blessing. While it can revive a chance for acquittal, it also subjects them yet again to the possibility of error, political meddling, and personal vendetta. During a new trial, the accused remain in prison, potentially doubling their time behind bars to four years.

- Rómulo Mori Zavaleta and Wagner Cruz Mori, his nephew, were sentenced to twenty years in prison for having aided a wounded guerrilla, also a relative, who had threatened them with death if they failed to comply. After twenty-six months in prison, a mistrial was declared. In the new trial, the court revoked their sentences. Nevertheless, Mori left prison with tuberculosis and financially ruined.¹⁰⁹

Appeals, which are not automatic, can be filed with the Supreme Court, which has named a special Antiterrorist Criminal Chamber to review cases. However, the same problems that plague the trial phase of the proceedings, including prolonged delays, persist.¹¹⁰

An informal survey by IDL found that forty percent of the terrorism cases heard in the two faceless courts that operate in Lambayeque eventually ended in acquittal. Once found guilty, however, an individual has only a slim chance of overturning the decision on appeal. Over eighty percent of the appeals IDL has been able to review were denied. The average time in prison for those eventually acquitted is twenty-eight months.¹¹¹

Treason Cases: Military Faceless Tribunals

In military tribunals, four judges sit on the faceless panel and are assisted by a military attorney. The judges are active-duty officers subject to the orders of their superiors in keeping with standard military hierarchy. Especially when judging their battlefield enemy, these officers do not constitute an impartial, independent court.

¹⁰⁶ HRW/Americas interviews, Luna de Guerra and Rebolledo families, Pisci, July 26, 1994.

¹⁰⁷ Ibid.

¹⁰⁸ HRW/Americas interview, Norbel Mondragón, Pisci, July 26, 1994.

¹⁰⁹ HRW/Americas telephone interview, APRODEH, October 31, 1994; and "Defensor de Rómulo Mori Zavaleta exigirá reparación civil," *La República*, November 11, 1994.

¹¹⁰ Commission of International Jurists, *Report on the Administration of Justice*, p. 33.

¹¹¹ HRW/Americas interview, IDL, Lima, July 19, 1994.

As the Commission of International Jurists pointed out, their work as judges plays a decisive role in future promotions and professional rewards. "Military justice," the Commission noted, "becomes a derivative of the policies inspired and directed by the military command."¹¹²

Treason cases are the most difficult to defend, say lawyers and those acquitted of treason and released. Laws guarantee that members of the security forces alone have the power to gather evidence, accuse, imprison, prosecute, sentence, and adjudicate appeals, a legal quarantine that is unique in the world.¹¹³ This power over civilians is especially disturbing in view of the Peruvian military's record of massive human rights violations over the past fourteen years of political conflict and a proven unwillingness to investigate or punish those violations, discussed later in this report.

In treason cases, the review by a prosecutor, investigation, defense, and final verdict must take place within ten days of a formal charge. Repeatedly, cases have progressed so quickly that the defense lawyer has not been able to submit a defense and has not been informed of where in the country the case will be heard. Notifications routinely arrive late or after hearings are held. In its report of a May 1993 visit to Peru, the Inter-American Commission of Human Rights of the Organization of American States concluded that because of the summary nature of these trials, "there may be virtually no investigation, meaning that convictions will be based on the findings of police reports."¹¹⁴

- The defense lawyer for landscape designer Miguel Ruiz Conejo was notified two days late about the investigative stage of the trial, which took place in Arequipa, a days' drive from Lima, where Ruiz Conejo had been arrested. The day after the notification was received, Ruiz Conejo was sentenced to thirty years in prison. Given two hours to review the sentence, the lawyer filed an appeal that was denied the next day. However, the Supreme Council of Military Justice subsequently accepted an extraordinary appeal, then sent the case to a civilian faceless court, where Ruiz Conejo was acquitted.¹¹⁵

Procedural confusion due to the military's unwillingness to make public its deliberations or investigate mistakes has also resulted in serious miscarriages of justice. Although the military prosecutor and tribunal had concluded that defendant Ada Nivín was innocent, the Supreme Military Council illegally revoked her acquittal and sentenced her to thirty years, acting not as an appeals court but as a trial court.¹¹⁶

Rarely do military tribunals free defendants they find not guilty. More common is an acquittal on the charge of treason, followed by a new charge of terrorism, thus highlighting the similarity of the terrorism and treason laws. Usually, no new evidence is presented, meaning that individuals are tried twice for what is in essence the same crime.

¹¹² Commission of International Jurists, *Report on the Administration of Justice*, p. 38.

¹¹³ *Ibid.*, p. 39.

¹¹⁴ *Annual Report of the Inter-American Commission on Human Rights 1993* (Washington: Organization of American States, 1994), p. 508.

¹¹⁵ HRW/Americas interview, IDL, Lima, February 16, 1993; and Letter to HRW/Americas from IDL, January 23, 1995.

¹¹⁶ Nivín was acquitted after the Supreme Military Council reviewed a last-chance appeal, called a *recurso extraordinario de revisión*. "El valor de la libertad," *dele*, November 1993, pp. 41-44.

- Julio Ismael Loa Alborñoz was arrested on the testimony of a repented guerrilla and charged with terrorism. Although the faceless prosecutor recommended a verdict of not guilty, the case was suddenly transferred to a military tribunal since the other individual implicated, Loa's accuser, was charged with treason. Although the faceless military prosecutor did not formalize a charge against Loa, a sign that he believed Loa was innocent, the officers on the tribunal condemned Loa to fifteen years. The sentence has since been annulled because of procedural errors. Instead of being released, however, Loa was sent a second time to a faceless civilian court where he awaits a verdict.¹¹⁷

A similar fate awaited teacher María Loayza Tamayo, who was acquitted of treason by a military tribunal, but now faces trial before a civilian faceless court. Loayza, accused by a repentant guerrilla, told human rights groups that she was raped by DINCOTE agents while in custody.¹¹⁸

Other forces unconnected with the merits of cases also influence how they are handled by military tribunals. Lawyers experienced with treason cases believe that military tribunals are now sending more cases to civilian courts, where the accused eventually win freedom. The reason has nothing to do with leniency, but rather a decades-old rivalry between the military and police branches of the security forces. Peruvian soldiers, the reasoning goes, have long derided police officers as unprofessional and corrupt, so are less likely than civilian judges to accept evidence gathered by police at face value.¹¹⁹

Of the 243 individuals tried for treason in 1994, seven were found not guilty, an astonishing conviction rate of 97 percent. While it is clear that some of those convicted were guilty, this phenomenal rate also testifies to the extreme difficulties involved in defending those charged.¹²⁰

The appeals process in treason cases does not protect those charged from abuses, but rather insures that no independent court can challenge or even review a verdict. Allowed only three days to submit an appeal, the defense is prohibited outright from appealing a sentence of less than thirty years.¹²¹

In November 1993, the appeals process was modified slightly to allow the defense to present the Supreme Council of Military Justice with an extraordinary appeal called a *recurso extraordinario de revisión* if it could prove that key evidence was ignored or was not presented. However, defense lawyers believe most extraordinary appeals are denied.¹²² The civilian Supreme Court is barred from reviewing any appeal of the verdict of a military tribunal.¹²³

Prison

¹¹⁷ HRW/Americas telephone interview, FEDEPAZ, December 16, 1994.

¹¹⁸ Human Rights Watch/Americas and the Center for Justice and International Law (CEJIL) are litigating a complaint on behalf of María Loayza Tamayo against the government of Peru at the Inter-American Commission on Human Rights for multiple violations of the American Convention on Human Rights. The Commission has submitted the case to the Inter-American Court of Human Rights.

¹¹⁹ HRW/Americas interview, Lima, July 21, 1994.

¹²⁰ Access to more complete information to measure the work of faceless courts is denied independent observers, including human rights groups, who must piece together a picture from cases they defend or the information provided to them from the accused, other sources, or family members. Letter to HRW/Americas from IDL, January 23, 1995.

¹²¹ *Annual Report of the Inter-American Commission*, p. 508.

¹²² Although according to law the same thirty-year limit applies, defense lawyers continue to submit appeals and *recursos extraordinarios de revisión* in cases where the sentence handed down is less. Of the 243 individuals whose cases were concluded by military tribunals only forty-three received sentences of less than thirty years. DL 26248; and HRW/Americas telephone interview, Norma Rojas, IDL, February 1, 1995.

¹²³ Commission of International Jurists, *Report on the Administration of Justice*, p. 39.
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Prison conditions for both those accused and convicted under these laws are harsh. No difference is formally recognized between the accused and the convicted. Once charged under these laws, the accused are treated as guilty and subjected to the same punitive rules.¹²⁴

Most terrorism defendants are held in Lima's Miguel Castro Castro Prison, followed in number by Lambayeque's Picsi Prison.¹²⁵ Most have not been sentenced and are awaiting trial.¹²⁶ In the Cuzco prison of Quencoro, for example, visitors have confirmed that most prisoners have yet to face trial, some waiting for over two years.¹²⁷

Within prisons, wardens, guards, and prisoners have explicitly acknowledged the difference between those they consider wrongly accused of terrorism or treason and those who openly profess allegiance to guerrilla groups. In Lima's Santa Mónica Prison for Women, for instance, prisoners are assigned to one of three cellblocks depending on the warden's evaluation of their guilt. Cellblock A is reserved for the innocent; Cellblock B is for members of the two armed insurgencies; and Cellblock C is used for new prisoners yet to be assigned a cell or prisoners being released or transferred to other facilities.¹²⁸ While in Yanamayo Prison, engineer Miguel Ruiz Conejo organized a group of independents, more than thirty individuals.¹²⁹

Terrorism and treason prisoners suffer severe restrictions on food, family visits, and activities within prison. The *paila*, rations prepared by the authorities, are of poor quality, yet there is never enough to go around.¹³⁰ Treason and terrorism prisoners survive off the food brought once a month by family members. Even this food is sharply restricted, however. There are limits on types of food brought and amounts. In some instances, prison guards have forced visitors to divide in half whole fruits, like papayas, claiming that this is a prison rule.¹³¹ Our request for a copy of the rules at one maximum-security prison was denied.¹³²

¹²⁴ HRW/Americas interview, Ronald Gamarra, IDL, Washington, D.C., April 14, 1994.

¹²⁵ Treason and terrorism defendants and convicts are kept in six maximum security prisons located throughout Peru. Terrorism defendants and convicts are also housed in nine other facilities. The captured leaders of Peru's two guerrilla groups are kept in a separate military prison. Letter to HRW/Americas from APRODEH, January 25, 1995.

¹²⁶ HRW/Americas interview, IDL, Lima, July 19, 1994.

¹²⁷ "Población de Quencoro carece de camas y frazadas," *El Comercio*, August 11, 1994.

¹²⁸ HRW/Americas interview, Pilar Aguilar, IDL, Lima, July 19, 1994.

¹²⁹ Miguel Ruiz Conejo, "...y pensé, qué manera tan estúpida de morir!" *ideele*, April 1994, pp. 20-22.

¹³⁰ After drunken policemen jailed his wife on a minor infraction, José Rufasto Castillo, a welder from Ambato-Tamborapa, in the department of Amazonas, traveled to Chiclayo to complain to authorities. In his absence, the MRTA attacked the town. Within a week, Castillo was arrested by the police he had complained about and accused of having helped guerrillas. While in Picsi Prison, Castillo wrote us about the conditions, which included restrictions on food, water, and family visits. Letter to HRW/Americas from José Rufasto Castillo, February 1993.

¹³¹ HRW/Americas interview, Luna de Guerra and Rebolledo families, Picsi, July 26, 1994.

¹³² HRW/Americas interview, July 26, 1994.

For the first year after conviction, terrorism and treason convicts may not receive visits.¹³³ Afterwards, visits are restricted to immediate family members, and take place once a month, for one half hour. Prisoners, including new mothers, are severely restricted from seeing their children.¹³⁴ Most prisoners are confined to tiny cells shared with two to three others except for a half-hour exercise period once a day.¹³⁵

These same rules applied to children accused or convicted of these crimes until the April 1995 reforms. Although children were held separately from adults, they were submitted to the same punitive regime, in violation of Peru's obligations under Article 37c of the Convention on the Rights of the Child.¹³⁶

Overcrowding appears to be the norm for prisons devoted to terrorism and treason cases. Pisci Prison, for instance, built to house 450 men, held 1,200 when the Coordinadora visited in March 1994, some there for common crimes.¹³⁷ When we visited four months later, family members of prisoners told us that the facilities have never had running water. Instead, prison authorities deliver water in trucks. An impressive water tower erected next to the prison wall is a recent addition, and remained dry. Even when water is delivered, however, it is filthy and there is never enough to go around. Prisoners able to get water hoard it for washing. Those too sick, elderly, or infirm to fight for a place in line go without.¹³⁸

Although Human Rights Watch/Americas has repeatedly requested permission to visit Peru's prisons and see first-hand improvements the government claims to have made in living conditions, permission has been repeatedly denied.¹³⁹ Lawyers seeking to interview potential clients have also been denied access to prisons. In September 1994, lawyers from IDL attempted to enter Yanamayo Prison in Puno to interview three individuals they believe to be innocent in order to assume their cases. However, they were prevented from entering the prison with the excuse that they needed first to gain permission from the Justice Ministry.¹⁴⁰

The Inter-American Commission of Human Rights, the only group that makes public reports of its visits that has been allowed to enter Puno's Yanamayo Prison, commented that it had communicated directly to President Fujimori its concern over "the generalized conditions of extreme suffering experienced by the internees, many of whom are without sentence." The Commission noted that in other prisons, inmates had reported a lack of access to medical attention, scarce food, and unnecessarily restrictive visits with lawyers and family members.¹⁴¹

¹³³ Article 20, DL 25475.

¹³⁴ Women who give birth in prison are allowed to remain with their newborns only three months. During his time in prison, Juan Mallea was barred from seeing his children. HRW/Americas interview, Lima, July 21, 1994 and December 22, 1994; and Juan Mallea, "Que mi sufrir sirva a los inocentes," *ideele*, May 1994, pp. 30-31.

¹³⁵ HRW/Americas interview, Pisci, July 26, 1994.

¹³⁶ HRW/Americas telephone interview, Antonio Salazar, CEAPAZ, March 15, 1994.

¹³⁷ Coordinadora, "Report from the Coordinadora on visits to Chiclayo, Piura, and Chulucanas, March 7-11, 1994."

¹³⁸ HRW/Americas interview, Luna de Guerra and Rebolledo families, Pisci, July 26, 1994.

¹³⁹ During the two previous administrations in Peru, and in the first two years of Fujimori's government, we were granted permission to visit prisons regularly.

¹⁴⁰ "Se nos impide ingreso a Yanamayo," *ideele*, October 1994, p. 51.

¹⁴¹ Report by a Special Commission of the Inter-American Commission on Human Rights visit *in loco*, May 17-21, 1993, p. 541.

Former prisoner Miguel Ruiz Conejo, acquitted after seventeen months battling a charge of treason, told reporters that Yanamayo conditions included an average temperature below forty degrees Fahrenheit and deprivation that has left prisoners "a parade of skulls. I don't believe anyone could survive more than four years there."¹⁴²

The Repentance Law

¹⁴² Miguel Ruiz Conejo, "... y pensé, ¡qué manera tan estúpida de morir!" *Ideele*, April 1994, pp. 20-22.
Human Rights Watch/Americas 28 July 1995, Vol. 7, No. 9

Implemented in May 1992, the repentance law (DL 25499) went unremarked at first. By mid-1993, however, hundreds of people were being arrested on the testimony of individuals who had surrendered under its aegis, called *arrepentidos*. During the thirty months the law was in force, 5,516 former members of the Shining Path and 814 former members of the MRTA were registered as *arrepentidos* by the government, an astonishing number given that estimates of the armed strength of these groups in previous years had rarely surpassed 5,000.¹⁴³

The law allows *arrepentidos* to surrender to authorities and give information or names of guerrillas in exchange for reduced or suspended sentences. Before such benefits are extended, however, by law police are supposed to corroborate the information. Exempted from the law are those charged under Article 3a of the terrorism law, which criminalizes the act of leading a terrorist group or participating in death squads led by guerrillas.¹⁴⁴ *Arrepentidos* whose testimony leads directly to the capture of guerrilla leaders or the discovery of planned actions may have their sentences suspended.¹⁴⁵

Like other aspects of antiterrorism legislation, the repentance law has been used in an arbitrary way that has led to serious violations of human rights. The testimony of *arrepentidos* has been used to implicate hundreds of Peruvians, a significant number of whom are innocent. Police, required to verify the statements of *arrepentidos*, often did not do so, meaning that uncorroborated statements have been used to implicate individuals despite obvious errors or inconsistencies. Since the defense cannot know the identity of the *arrepentido* or question him or her directly, or often even read the testimony, such evidence is by its nature deeply flawed.¹⁴⁶

In repeated instances, *arrepentidos* have exploited the arbitrary nature of the law to exact vengeance, as in the case of Santosa Layme Bejar.¹⁴⁷ A mother of three, Layme joined a soup kitchen in Lima's San Juan de Lurigancho municipality in 1983. Organized and run by the poor, soup kitchens have long been credited with keeping thousands of Peruvians alive despite massive unemployment and the country's near economic collapse. They also became a battle ground between a government searching for guerrilla support networks and the guerrillas themselves, who resorted to increasingly brutal methods to force support.¹⁴⁸

Layme's leadership made her a target for Shining Path guerrillas. In a letter left beneath her door, they threatened to kill her if she didn't give them soup kitchen food. At the time, Layme notified her associates of the threat and went to the local police station to report it. However, police told her that the threat was probably the work of a disgruntled neighbor. Unless she paid for a taxi to take him to her home, the policeman told her, he would not investigate.¹⁴⁹

¹⁴³ Embassy of Peru, "Perunewsletter," November 4, 1994.

¹⁴⁴ DL 25499, *El Peruano*, May 16, 1992.

¹⁴⁵ Decreto Supremo No. 015-93-JUS, published in *El Peruano* on May 8, 1993, established the rules under which an *arrepentido* could provide information and receive the law's benefits.

¹⁴⁶ HRW/Americas interviews with APRODEH, CEAPAZ, FEDEPAZ, and IDL, Lima, July 18-22, 1994.

¹⁴⁷ Ibid.

¹⁴⁸ For more on threats by both the government and Shining Path against women soup kitchen leaders, see Americas Watch/Women's Rights Project, *Untold Terror: Violence against Women in Peru's Armed Conflict* (New York: Human Rights Watch, 1992), pp. 48-56.

¹⁴⁹ Case summary, IDL, Lima, June, 1994.

Later, a woman who identified herself as the family member of a political prisoner, the phrase used by the Shining Path to describe militants in jail, came to the soup kitchen and demanded food for herself and a companion. Layme said she fed them on two occasions "out of fear and dread."¹⁵⁰

Months later, one of the guerrillas who made the threat was captured by police. Hoping to take advantage of the repentance law, he gave police Layme's name as someone who had given them food and allowed them to meet in her house. Human rights groups believe he made his initial declaration under torture. He may also have been motivated by a desire to smear a powerful opponent to the Shining Path's political goals in the area, a tactic human rights groups say that several supposedly repentant guerrillas have employed.¹⁵¹ Based solely on this testimony, Layme was arrested on February 26, 1994, and charged with terrorism. Layme spent a year in prison before her acquittal.¹⁵²

Human rights groups have also received reports that some arrepentidos give the names only of those forced to collaborate with guerrillas under threat of death, and conceal the names of individuals who were leaders.¹⁵³

In other cases, former guerrillas were forced to implicate others under torture. Arrepentidos often give testimony to police without the presence of a lawyer or a representative of the Public Ministry, despite the fact that the latter is required.¹⁵⁴ One of the most infamous cases involved peasant Santos Gilberto Robles Paredes, who claims he was recruited by force into the Shining Path. After his arrest, he said he was obligated under torture by DINCOTE to implicate 118 individuals in acts of terrorism. In exchange, he says that DINCOTE Colonel José Miguel Borja plied him with liquor and promised to allow him to leave the country. Of the fifty-six eventually arrested, twenty-seven were released after months in prison. When he made his story public, Robles admitted that some of the twenty-nine people sentenced because of his testimony were innocent.¹⁵⁵

Although some courts continue to emit guilty verdicts based solely on this type of spurious evidence, others have concluded that the testimony of a single arrepentido cannot be considered conclusive evidence in a terrorism trial. Citing "innumerable supreme court verdicts," the Chiclayo-based faceless court upheld this prohibition in a decision made on June 1, 1994.¹⁵⁶ One of the men released by this verdict was Piura teacher Vicente Patiño, accused of supporting the MRTA. Despite the lack of any other evidence against Patiño or an investigation of the arrepentido's testimony, both the investigative judge and the faceless prosecutor had called for a guilty sentence.¹⁵⁷

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Amnesty International, "Peru: Anti-terrorism laws continue to fall short of international human rights standards," AMR 46/05/94, April 1994.

¹⁵⁴ Article 18 of DS 015-93-JUS specifically states that the defense attorney need not be present in order for police or soldiers to take the declaration of an arrepentido. Coordinadora Nacional de Derechos Humanos, *En nombre de los inocentes*, (Lima: 1993) pp. 121-133.

¹⁵⁵ Report by the Special Commission of the Inter-American Commission of Human rights visit *in loco* to Peru, May 17-21, 1993, pp. 526-527.

¹⁵⁶ Lambayeque Superior Court, File No. 245-93; and HRW/Americas interview, Norbel Mondragón, Chiclayo, July 25, 1994.

¹⁵⁷ Before his release eight months later, Patiño was an Amnesty International prisoner of conscience. "Sentencia ejemplar," *Wzeta*, July 1994, pp. 50-51.

The Coordinadora has also received reports that whole villages in areas formerly dominated by the Shining Path were obligated by the security forces to surrender as arrepentidos.¹⁵⁸ Although communities forced to live under guerrilla control are not included as beneficiaries of the law, the government appeared willing to accept them as arrepentidos as long as a public relations point could be made about the guerrillas' weakness.¹⁵⁹

In Tingo María, department of Huánuco, local authorities told reporters that the army orchestrated mass surrenders in March 1994 by threatening residents to repent or be killed.¹⁶⁰ A month later, army troops swept the countryside attacking those who remained as "subversives." After "Operation Aries" concluded, human rights groups registered thirty-one extrajudicial executions, as well as rape, torture, and the razing of homes and farms.¹⁶¹

Asked about the plight of those arrested and convicted on the uncorroborated testimony of a single arrepentido, special prosecutor for terrorism and treason cases Daniel Espichán responded with indifference. "One can't cry over spilled milk, because the law has been applied," he commented to reporters in September 1994.¹⁶²

Serious questions were raised about the secret rules applied to selected arrepentidos when it became clear that some received special treatment that violated the terms set out in the repentance law. Among the most glaring examples were the 1994 releases of three Shining Path leaders, among them Luis Alberto Arana Franco, an early convert who purportedly became treasurer of the group's clandestine Central Committee. According to police, after his capture in June 1992, Arana gave information that led to the capture of Abimael Guzmán.¹⁶³

Information given to police would have made Arana eligible for a reduced sentence if he had not been a Shining Path leader. However, Article 1, Section III of the repentance law explicitly bars guerrilla leaders from benefitting from the law.¹⁶⁴ Nevertheless, Arana's release was approved nineteen months after his arrest.¹⁶⁵ Apparently, a number of former Shining Path leaders or members of guerrilla death squads have been released, given new identities, and even money until a new job is found for them in Peru or another country.¹⁶⁶

¹⁵⁸ Coordinadora, "Propuesta de modificaciones urgentes a la legislación sobre arrepentimiento," July 1994, pp. 9-10.

¹⁵⁹ Norma Rojas, "Luces y sombras de la ley de arrepentimiento," *ideele*, November 1994, pp. 11-12.

¹⁶⁰ One prosecutor told journalists that he alone had received over 6,000 petitions from would-be arrepentidos in the region around Tingo María, Huánuco. Mónica Vecco, "Se arrepienten o los acusamos de terrucos" and "Un solo fiscal verifica caso de 3,500 arrepentidos," *La República*, July 18-19, 1994.

¹⁶¹ *La República*, FBIS, March 22, 1994; and Coordinadora, *Los sucesos del Alto Huallaga* (Lima: Coordinadora, June 1994).

¹⁶² "Arrepentidos," *Sí*, September 5, 1994.

¹⁶³ "¿Qué hay detrás de la liberación de Arana?" *ideele*, July 1994, pp. 12-14; and EFE, FBIS, July 6, 1994.

¹⁶⁴ This section includes those named in Article 3 of DL 25475, including those who belong to the national leadership of terrorist groups.

¹⁶⁵ "¿Qué hay detrás de la liberación de Arana?" *ideele*, July, 1994, pp. 12-14.

¹⁶⁶ Among those reported by the press to have been released are three guerrillas who took part in the killing of María Elena Moyano, the vice-mayor of Villa El Salvador and a women's rights advocate. "Cadena perpetua para asesinos de Malena,"

Such releases are particularly ironic, pointed out the Coordinadora, "when so many innocents remain in jail." They also demonstrate the law's lack of transparency and the absence of an effective way to ensure that individuals who have committed serious crimes are punished.¹⁶⁷

Theories explaining Arana's release abounded in the press: fruit of a secret peace accord, a way for the National Intelligence Service (SIN) to discredit the courts and police, or a blow against the DINCOTE general who engineered Guzmán's capture and became an electoral threat to Fujimori. What was clear, however, was that the repentance law was open to manipulation from the executive at will.¹⁶⁸

Supreme Court President Luis Serpa Segura ordered an investigation into Arana's release; however, Serpa later announced without further explanation that he had found no irregularities or wrongdoing.¹⁶⁹ Ironically, releases of Shining Path leaders, used by President Fujimori in 1992 as an excuse to suspend constitutional rule and gut the judiciary, were passed off by Fujimori loyalists as "accidental matters."¹⁷⁰

President Fujimori took advantage of the furor over Arana's release to stress the need for less transparency, not more. "This reaffirms my belief," he noted, "that because they are dangerous (the terrorists) should be tried by military courts, for the security of the country."¹⁷¹

President Fujimori has also used the repentance law for electoral reasons. In October 1994, he proclaimed during a campaign stop in Huánuco that the president of the department's superior court, the rector of the local university, and five university professors were arrepentidos.¹⁷² His declaration violated one of the most important provisions of the repentance law: that the identity of the arrepentido be kept secret.¹⁷³ Later, President Fujimori admitted mistaking the court president for one of its members, whose name he also gave to the press.¹⁷⁴

President Fujimori defended the action by claiming to reporters that since they were local authorities, "We could not maintain their anonymity in this situation because these were important authorities and we had to let the public know what was happening."¹⁷⁵ Family members of some of the alleged arrepentidos denied that they had asked for protection under the repentance law.¹⁷⁶

¹⁶⁷ Coordinadora, Press release, June 24, 1994.

¹⁶⁸ "¿Qué hay detrás de la liberación de Arana?" *ideele*, July, 1994, pp. 12-14.

¹⁶⁹ EFE, FBIS, July 6, 1994.

¹⁷⁰ "¿Liberación de terroristas queda en el misterio?" *La República*, July 8, 1994.

¹⁷¹ *El Comercio*, FBIS, June 20, 1994.

¹⁷² "Rector y juez superior de Huánuco eran militantes senderistas," *El Comercio*, October 17, 1994.

¹⁷³ Article 8, DL 25499.

¹⁷⁴ "Fujimori admite error al mencionar nombre de magistrado vinculado a Sendero," *Expreso*, October 18, 1994.

¹⁷⁵ "Universidad de Huánuco," *Resumen Semanal*, DESCO, No. 792, October 19-25, 1994.

¹⁷⁶ "Dice hija de rector acusado: mi padre es inocente y nunca se arrepintió," *Expreso*, October 18, 1994; and "Fuerzas armadas no permiten comunicarse con él," *La República*, October 19, 1994.

Others who have sought to benefit from the law by confessing discovered that they were treated as captured guerrillas and that authorities failed to extend to them the law's benefits. In one case, a former MRTA guerrilla says he voluntarily surrendered and gave police information only to be presented to the press in a striped convict's uniform, violating the law's guarantee of confidentiality.¹⁷⁷

The Coordinadora proposed to Peru's legislators a detailed set of reforms to the repentance law, among them a higher standard for corroborating information given by arrepentidos, safeguards against torture, and stricter guidelines on who may qualify as an arrepentido.¹⁷⁸ None of these reforms were adopted before the law was repealed on November 1, 1994.

Laws to encourage repentance and turn state's witness should include procedural safeguards leading to transparency and to protect defendants from misleading or untruthful testimony. As it was applied in Peru, the repentance law became a weapon of arbitrariness rather than a tough but just law enforcement tool.

Attempts at Reform

In a creative initiative, the Clinton administration named a commission of jurists with expertise in international covenants, antiterrorism legislation, and fair trial guarantees to study Peru's new laws and the independence of the judiciary in the wake of the 1992 coup. The Peruvian government agreed to host the commission in Lima and accepted its members, who made the trip to Peru in September 1993.

¹⁷⁷ Letter to HRW/Americas from Santiago Alvarado Torres, December 28, 1993.

¹⁷⁸ Coordinadora, "Propuesta de modificaciones urgentes a la legislación sobre arrepentimiento," July 1994, Human Rights Watch/Americas, July 1995, Vol. 7, No. 9.

While there, what became known as the Goldman Commission interviewed government ministers, judicial employees, military officers, and human rights leaders. In its final report, approved unanimously, the commission summarized the international covenants to which Peru is a party, underscoring existing standards for judicial independence and due process rights. After reviewing antiterrorism legislation in Italy, Spain, Germany, and France, the Peruvian laws and judicial procedures were examined in depth. The report concluded that many aspects of Peru's judicial system and laws violate international norms and suggested concrete reforms to bring Peru into compliance with its international obligations.¹⁷⁹

The report found that the administration of justice in terrorism and treason cases is "seriously flawed and at odds in many key respects with Peru's international obligations." To remedy this dramatic miscarriage of justice, the report recommends immediate reforms, including an end to military court jurisdiction over civilians, an end to the expanded death penalty, the rehabilitation of the independence of the judiciary by the appointment of permanent employees by an independent committee, and specific reforms in the way the terrorism and treason laws are phrased and carried out.¹⁸⁰

Since the publication of the Goldman Commission report, there have been a plethora of reform proposals.¹⁸¹ Among the most comprehensive was a proposal submitted by the Coordinadora, which would return the power to charge suspects to prosecutors and judges and abolish faceless courts and the jurisdiction of military tribunals over civilians.¹⁸²

¹⁷⁹ The members of the Commission included Robert K. Goldman, professor of law at the Washington College of Law of the American University; León Carlos Arslanian, the former Chief Judge of the Federal Court of Appeals for Buenos Aires, Argentina, that tried and convicted former junta members for the crimes of the "dirty war" of 1976-83; Ferdinando Imposimato, member of the Italian congress and a former criminal court judge; and José Raffucci, U.S. Navy commander and head of the Base Rights Negotiation and Foreign Criminal Jurisdiction at the International Law Division of the Office of the Judge Advocate General of the Navy. Press release for Commission of International Jurists, *Report on the Administration of Justice*, pp. 1-2. A Spanish version of the report was published by IDL in August 1994. Goldman was recently elected a member of the Inter-American Commission on Human Rights of the OAS.

¹⁸⁰ Commission of International Jurists, *Report on the Administration of Justice*, pp. 49-52.

¹⁸¹ In September 1994, the Peruvian Bar Association presented to the CCD two proposals designed to abolish life sentences, military courts for civilians, and faceless courts.

¹⁸² Coordinadora, *En nombre de los inocentes*, pp. 55-59.

In an apparent attempt to preempt the effect of the Goldman commission's report, the CCD modified some of the most egregious provisions of the laws on November 12, 1993. At the urging of the president's office, the CCD authorized the Supreme Council of Military Justice to review a sentence imposed by a military court in treason cases where there is new evidence of flagrant judicial error. The law also eliminated the ban on lawyers representing more than one client charged under these laws at a time, the ban on *habeas corpus* petitions, and *in absentia* trials.¹⁸³

A subsequent reform passed by the CCD on April 19, 1995, set a date for an end to civilian faceless courts, reversed the measure that lowered the age of majority to fifteen, and reestablished the rights of defendants to choose a lawyer and be advised by an attorney from the beginning of the police investigation.¹⁸⁴ Human Rights Watch/Americas welcomes these reforms, although they do not address many serious and fundamental due process violations inherent to the system. Among the important problems remaining are the continued use of faceless military courts to prosecute civilians accused of treason, excessive investigatory powers in police hands, definitions of terrorism and treason which violate freedom of expression, and no provisions for a systematic independent review of past cases. Finally, the law also delays the end of faceless civilian courts until October 15, 1995, an unnecessary lapse that may push prosecutors and judges to obtain convictions in pending cases before the deadline.

It must be noted that few of the reforms implemented to date have had a significant effect on judicial independence or the protection of due process. For instance, fifty-nine of the sixty individuals sentenced *in absentia* before this practice was prohibited remain in jail.¹⁸⁵ Most writs of *habeas corpus* submitted after the measure was reinstated on November 26, 1993, have been declared unfounded, with no appeal possible.¹⁸⁶

Although a supreme decree now restricts police from displaying all detainees for terrorism-related crimes to the press, public displays of treason suspects are still allowed.¹⁸⁷ The accused can now petition for provisional liberty; however, requests must be approved by a faceless court, which can take as long as the trial itself.¹⁸⁸ A CCD bill that would establish an independent commission to review cases where an individual may have been wrongly convicted remains in committee debate.¹⁸⁹

¹⁸³ DL 26248, *El Peruano*, November 12, 1994.

¹⁸⁴ DL 26447.

¹⁸⁵ Letter to HRW/Americas from IDL, January 23, 1995.

¹⁸⁶ HRW/Americas telephone interview, IDL, July 4, 1995.

¹⁸⁷ *Ibid.*

¹⁸⁸ For example, after a recruit lost his revolver, he was beaten by his superiors at the Churcampa, Ayacucho, army base. To stop the torture, the soldier gave them the name of a local leader of a civil defense patrol, who in turn was tortured into giving the names of eight members of the patrol. Although a military tribunal absolved them of treason, the case was referred to a civilian court for trial. A conscientious investigative judge immediately ordered their release. But the release was not confirmed by a panel of faceless judges until a year after their arrest. "¿Así se paga a quienes combaten a Sendero?" *ideele*, May 1994, pp. 33-3; and "¡Libertad de fiesta!, *ideele*, August 1994, p. 29.

¹⁸⁹ "Comisión de notables para revisión de casos," *ideele*, May-June, 1995, p. 58.

The Peruvian government appointed a Magistrate Honor Board (Jurado de Honor de la Magistratura) in March 1993 to begin replacing prosecutors and judges retained provisionally after the April 5, 1992, coup with permanent appointees. Composed of five respected jurists, the board operated for twenty-one months. Subsequently, its duties were assumed by the National Magistrate Council (Consejo Nacional de la Magistratura), created by the new Constitution.¹⁹⁰ By mid-1995, however, only the city of Lima had a full complement of permanent judges and prosecutors. Over 1,500 positions remained unfilled.¹⁹¹

Although the 1993 Constitution reinstated the Constitutional Guarantees Court (*Tribunal de Garantías Constitucionales*) abolished after the coup, it has yet to be implemented and begin reviewing any of the more than 600 cases of alleged violations of the Constitution waiting to be resolved. This delay benefits Peru's executive branch, against which hundreds of cases are pending.¹⁹² The Court has been inactive since Fujimori fired all of its judges in 1992, a fact which speaks volumes about the president's regard for basic rights.

President Fujimori's persistent meddling in the judiciary has meant that even those who may enjoy a nominal independence feel his imperative to refrain from actions that would bring any of his policies into question. In one of their first decisions, the newly-appointed members of the Supreme Court buckled to intense political pressure and voted to give jurisdiction over the La Cantuta case to a military tribunal, a vote one of the dissenting members termed "[a confirmation] of the fears about [the Court's] subservience to political pressure."¹⁹³ (See below, Chapter II.)

Far from being considered only provisional measures, to be abandoned after guerrilla insurgencies have been vanquished, much of what is unfair about terrorism-related legislation was incorporated into Peru's new Constitution, approved by referendum on October 31, 1993. Among the measures that are constitutional are incommunicado detention, Article 2(24.f); military tribunal jurisdiction over civilians accused of terrorism-related crimes and treason, Article 173; and an expansion of the death penalty to include individuals convicted of terrorism and treason, Article 140.¹⁹⁴

In contrast, changes that would further human rights protections have lagged. Arguing that the Constitution created a new office to oversee human rights, the Public Ombudsman (*Defensor del Pueblo*), the Public Ministry left vacant the posts of twenty-one special human rights prosecutors charged with receiving and processing complaints of human rights violations in June 1994.¹⁹⁵ Nevertheless, the CCD has yet to enact the legislation necessary to set up the office of the Defensor.

¹⁹⁰ The Consejo consists of delegates from the Supreme Court, Public Ministry, bar associations, professional associations, and public and private university rectors. HRW/Americas telephone interview, Ernesto de la Jara, IDL, January 19, 1995; and *Expreso*, FBIS, December 16, 1994.

¹⁹¹ Carlos Montoya Anguerry (Consejo member), "Un reto a cargo de todos," *ideele*, May-June, 1995, pp. 38-39; and Fernando de Trazegnies Granda (Jurado member), "El Jurado de Honor de la magistratura: balance de cierre," *ideele*, December 1994, pp. 99-103.

¹⁹² Coordinadora, *Informe Sobre la Situación de los Derechos Humanos en el Perú en 1994*, (Lima: Coordinadora Nacional de Derechos Humanos, 1995), pp. 44-45.

¹⁹³ Ernesto Giusti Acuña, "La reforma y el reto del nuevo Poder Judicial," *ideele*, March 1994, pp. 27-29.

¹⁹⁴ The CCD has yet to enact legislation that would introduce the death penalty for these cases. Congreso Constituyente Democrático, *Constitución Política del Perú*, approved by referendum on October 31, 1993.

¹⁹⁵ DS 36-94, JUS, June 20, 1994.
Human Rights Watch/Americas

The Fujimori administration has publicly scorned the reform proposals submitted to it; although eventually incorporating some of them into law. Especially strong was the response to the Goldman Commission report. Although the Fujimori government agreed to the composition and mandate of the commission, authorities were either hostile or unwilling to meet with commission members when they returned in November 1993 to present their findings to the government. Subsequent visits to Peru by the Association of the Bar of the City of New York and Amnesty International met with open hostility.¹⁹⁶

Led by President Fujimori and Justice Minister Vega, government spokespeople later criticized the report as an attack on Peru's sovereignty. "(The United States) has no moral authority to criticize us," President Fujimori told reporters.¹⁹⁷

Selected Treason Cases

Juan Carlos Chuchón Zea and Pelagia Salcedo Pizarro

In San Francisco de Pujas, their Ayacucho village, Juan Carlos Chuchón Zea was a local authority while Pelagia Salcedo Pizarro, his wife, took part in the parents' association. In 1981, just as the Shining Path was consolidating power throughout the southern highlands, the war ignited around San Francisco de Pujas. Chuchón told IDL that a militant named Eucario Najarro killed a local landowner. After Chuchón and two others turned Najarro in, guerrillas exacted revenge by attacking the village. Chuchón miraculously escaped, but the San Francisco de Pujas president and vice-president were murdered.¹⁹⁸

With their children, the couple escaped to Lima among the first wave of the over 600,000 internally displaced by the war.¹⁹⁹ Chuchón found work as a mason, while Salcedo became a market vendor. Protestant converts, they helped build a new church near their house, which they attended regularly.²⁰⁰

The peace they had won after escaping death a decade earlier ended on December 11, 1992, when police broke into their house. Although the law requires that a prosecutor accompany police during searches, even in emergency zones, none was there. Both Chuchón and Salcedo were hooded and hand-cuffed. With threats and blows, the house was searched.

Police claim they found two grenades, two homemade bombs, dynamite fuses, bullets, and guerrilla propaganda. Chuchón and Salcedo insist, however, that the police themselves brought these items with them, planting evidence in the house. Although Salcedo signed the police report, she later disavowed her signature, claiming it had been coerced with blows and threats. Chuchón refused to sign until he was taken to the headquarters of DINCOTE where, after being tortured with blows, electric shocks in the genitals, and death threats, he signed.²⁰¹

¹⁹⁶ Bar Associations delegates included a U.S. Federal court judge, a federal prosecutor, and lawyers experienced in international and criminal law. Their preliminary conclusions, released during a May press conference in Lima, were similar to those reached by the Goldman Commission. Preliminary Statement of the Mission to Peru of the Association of the Bar of the City of New York, May 9, 1994; and *EFE*, FBIS, May 4, 1994.

¹⁹⁷ *La República*, FBIS, April 13, 1994.

¹⁹⁸ HRW/Americas interview, IDL, Lima, July 19, 1994.

¹⁹⁹ *To Build Anew: An Update on Peru's Internally Displaced People* (Washington, D.C.: U.S. Committee for Refugees, 1993), p. 2.

²⁰⁰ HRW/Americas interview, IDL, Lima, July 19, 1994.

²⁰¹ Both Chuchón and Salcedo were later examined by doctors, who determined that they had been tortured. HRW/Americas interview, IDL, Lima, July 19, 1994.

Lawyers representing the couple found numerous errors in the declarations transcribed by police during the search. For instance, police lifted Chuchón's hood only long enough for him to declare that he had seen "something like an evaporated milk can but smaller and thinner and orange in color," which police transcribed as "a red cylindrical grenade." Repeatedly, police had to explain to Chuchón what the items were that they were registering.²⁰²

Before concluding their report, Chuchón said DINCOTE agents offered him a favorable report in exchange for money. The couple could not gather the sum demanded. Police included in the report the mention of explosives, insuring that the couple would be charged with treason and face a potential life sentence.²⁰³

Later, Chuchón realized that the arrest was a fluke. During a recent sporting event, Chuchón had met a cousin of Eucario Najarro, whose arrest had provoked the guerrillas' wrath in 1981 against San Francisco de Pujas. The cousin, also a guerrilla, had begun following Chuchón, apparently to murder him in an act of revenge. But police, themselves following the cousin, apparently assumed that Chuchón was some sort of guerrilla contact.²⁰⁴

Despite obvious errors in the police report as well as the documented use of torture, the judge, a Navy officer, asked for a life sentence. The Supreme Council of Military Justice confirmed Chuchón and Salcedo's guilt after an appeal, but reduced the sentence to thirty years, a move lawyers interpret as a tacit recognition of police errors. A second appeal was made on June 10, 1993, but was denied.²⁰⁵ The couple's lawyers are now searching for new evidence in order to submit a *recurso extraordinario de revisión* before the Supreme Council of Military Justice.²⁰⁶

In October 1994, IDL lawyers attempted to visit Chuchón in prison to interview him with the goal of assuming his defense and appealing his sentence. However, the prison director denied them entrance, claiming that they needed authorization from the Army general in command of the emergency zone and the Puno police commander. After several hours of discussion, the police commander informed them that both the Interior Ministry and the Justice Ministry in Lima had denied their request to enter the prison.²⁰⁷

Nancy Ruiz Nano

Is it treason to clean the house of a Shining Path member? Nancy Ruiz Nano is paying for her job with a life sentence in Yanamayo Prison. Her odyssey began in August 1992, when she says she responded to a sign advertising for a live-in maid stuck in a Lima apartment window. On September 12, 1992, Ruiz was arrested along with her employer, Germán Scipión, a high-ranking Shining Path member. Arrested the same day as Shining Path leader Abimael Guzmán, Scipión brought police to his apartment, where they arrested two Shining Path members and Ruiz.²⁰⁸

To DINCOTE, Ruiz explained that she was the maid and knew nothing about the activities of her employer or the other men and women who stayed temporarily in the apartment. Her testimony was supported by one of the captured guerrillas, who said that Ruiz had been hired because she appeared to be mentally retarded and wouldn't take note of their activities. Also attractive was the fact that this thirty-three-year-old woman had no family in Lima.²⁰⁹

²⁰² "Ella en Chorrillos y él en Yanamayo," *ideele*, July, 1994, pp. 31-32.

²⁰³ HRW/Americas interview, IDL, Lima, July 19, 1994.

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ HRW/Americas telephone interview, Norma Rojas, IDL, February 1, 1995.

²⁰⁷ "Se nos impide ingreso a Yanamayo," *ideele*, October 1994, p. 51.

²⁰⁸ "¡Cuidado! ¡Este aviso puede costarle cadena perpetua!" *ideele*, June 1994, pp. 36-40.

²⁰⁹ *Ibid.*

Nevertheless, police charged her with treason, basing themselves in part on the discovery in her room of a notebook containing notes on the Shining Path. Police claim a hand-writing analysis proves she is the author, although their analyses have proved erroneous in the past and are rarely made public. The public defender who assumed Ruiz's case apparently did not make an issue of this evidence. Ruiz was sentenced to life in prison as a Shining Path leader by a military tribunal.²¹⁰

In October, IDL lawyers attempted to visit Ruiz in prison and assume the appeal of her life sentence. However, the prison director denied them entrance.²¹¹

Miguel Ruiz Conejo, who is not related to Nancy Ruiz but who was unjustly imprisoned in Yanomayo prison with her, recalls: "When one speaks with her, one perceives immediately her lack of comprehension about the world around her." Even the prison guards, according to Ruiz Conejo, commented that "this girl is in nowhere-land."²¹²

Selected Terrorism Cases

Alfonso Castiglione Mendoza

When this young journalist visited the city of Huaraz, department of Ancash, in 1992, his dream was to open a radio station. A Buddhist who had once run for public office, Castiglione planned to set up a network to broadcast to provincial cities in northern Peru.²¹³

In a building belonging to José Orellana, Castiglione found an office he thought could be the home of "Radio Chavín." He paid a \$30 deposit. Later, however, he discovered that something about the location distorted the radio signal. He abandoned the plan, choosing instead the coastal city of Huacho.²¹⁴

It was there that Castiglione was arrested on April 29, 1993, and accused of having provided Shining Path guerrillas a room in which to plan an attack on a Huaraz prison that left one policeman dead. According to police, not only had guerrillas occupied Castiglione's room and used it to treat eight wounded escapees, but he had sent a note to José Orellana asking him to allow a man identified as Oscar Castillo to use the room.²¹⁵

As Castiglione was able to ascertain later, he was the victim of fraud. A friend of Castiglione's brother, who had initially introduced Castiglione to Orellana, had then used Castiglione's name to convince Orellana to rent the room to Castillo. Castillo turned out to be the Shining Path leader who led the attack on the prison while the brother's acquaintance worked in a clandestine support group.²¹⁶

Although police claim Castiglione wrote and signed a letter of recommendation for Castillo, no letter was ever introduced as evidence during the trial. To the contrary, Castillo, whose real name is Ricardo Pedro Espíritu Ramírez, told police that he had never met Castiglione and that they had used his name without his knowledge to secure a base of operations. During the attack on the prison, Castiglione was in Huacho.²¹⁷

²¹⁰ Ibid.

²¹¹ "Se nos impide ingreso a Yanamayo," *ideele*, October 1994, p. 51.

²¹² "¡Nancy es inocente!" *ideele*, June 1994, p. 38.

²¹³ "Inocente y lo condenan," *ideele*, October 1994, pp. 47-48.

²¹⁴ "El valor de la libertad," *ideele*, November 1993, pp. 41-44.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ Ibid.

Despite the absence of incriminating evidence, Castiglione was declared guilty of terrorism by a faceless court on August 19, 1994, and sentenced to twenty years. His case is being appealed. Castiglione has been adopted as an Amnesty International prisoner of conscience and has been named an honorary member of International PEN.²¹⁸

Wagner Sánchez Mendoza

For Wagner Sánchez Mendoza, the trip to Tarapoto, department of San Martín, augured well. With the financial backing of his former employer, Jorge Lostanau, he planned to buy land to set up a fish farm. On August 29, 1991, he and Orinson Bartra, who was selling land, set out on foot to look at the property. Along the way, a third man, unknown to both of them, joined them, conversing to pass the time.²¹⁹

Suddenly, police stopped the three men and demanded their documents. Evidently, someone had called in a report saying that three suspicious-looking men were walking along the highway. In Sánchez's backpack, police found only a book titled *Cria de animales menores (To Raise Small Animals)*. But in the backpack of the third man, who had attempted to escape, they found munitions, two automatic pistols, and camouflage clothing. All three were arrested.²²⁰

Although he was tortured, Sánchez maintained his innocence. Police offered to release him if he testified against the other men, but he refused.²²¹ Bartra, however, was tortured into implicating Sánchez in exchange for his freedom as an arrepentido. Although Bartra later recanted his testimony, the investigative judge based his decision to charge Sánchez with terrorism on Bartra's declarations to police. A lawyer contracted by Sánchez's former employer and business partner never showed up to present a defense.²²²

Confirming the judge's conclusions, the faceless prosecutor recommended a sentence of twenty-five years, which was reduced to ten years by a faceless court on June 2, 1993. An appeal before the Supreme Court remains unresolved.²²³

Sánchez suffers from tuberculosis, kidney stones, and other ills, but receives little medical care. In Lima's Castro Castro prison, he remains with the so-called independent prisoners, who devote their time to bible study.²²⁴ Meanwhile, Sánchez's partner and their four-year-old son have been evicted from their home since they cannot pay the rent. They now live in a shack behind the house of Sánchez's sister.²²⁵

Luis Alberto Cantoral

Twins Luis Alberto and Luis Fernando Cantoral Benavides were arrested by DINCOTE on February 6, 1993, after police entered the family house searching for an older brother. Although no information indicated that the twins were members of the Shining Path, both were charged with treason, apparently because their brother was suspected of having guerrilla ties.²²⁶

²¹⁸ Ibid.

²¹⁹ HRW/Americas interview, Jorge Lostanau, Lima, July 20, 1994.

²²⁰ Ibid.

²²¹ Letter to Supreme Court President Luis Serpa Segura from Jorge Lostanau, April 4, 1994.

²²² HRW/Americas interview, Jorge Lostanau, Lima, July 20, 1994.

²²³ Letter to Supreme Court President Luis Serpa Segura from APRODEH, February 10, 1994.

²²⁴ Letter to Jorge Lostanau from Wagner Sánchez Mendoza, February 8, 1994.

²²⁵ HRW/Americas interview, Jorge Lostanau, Lima, July 20, 1994.

²²⁶ Cecilia Valenzuela, "Castillo de arena," *Caretas*, October 21, 1994, pp. 8-10.
Human Rights Watch/Americas

While Luis Alberto was found not guilty, Luis Fernando was sentenced to twenty-five years. However, the faceless Navy judge (identified with the code BT-10003000) mistakenly ordered Luis Fernando released on August 20. When a civilian judge began to investigate the mix-up, which involved several other individuals, soldiers attempted to prevent her from examining the relevant documents, including case registries that had been falsified to cover up the error.²²⁷

FEDEPAZ lawyers defending Luis Alberto were forced to submit a writ of habeas corpus to get him released. However, the military tribunal claimed it had discovered new evidence implicating him and ordered new proceedings opened in a faceless civilian court.²²⁸

In October 1994, a faceless civilian court convicted Luis Alberto of terrorism and sentenced him to twenty years. Lawyers immediately appealed the decision and it is now before the Supreme Court.²²⁹

La Encañada

La Encañada, a hamlet on the road that connects the northern city of Cajamarca to Celendín, where the drop to the Amazon begins, is a place where everyone knows not only their neighbors' names, but their nicknames as well. A nickname is at the root of the arrest of three La Encañada residents, who are jailed in Chiclayo's Pisci Prison.²³⁰

On August 25, 1991, the Shining Path attacked the La Encañada telephone office and police post, killing three officers and seizing their weapons. A man locked in one of the cells in the station heard the attack, and later told investigators that he heard some voices saying either "*cumpa*," shorthand for comrade, or "*cuca*," a common nickname.²³¹

Emilio Escobal Lucano, a local resident known since boyhood as Cuca, was arrested because of his nickname. Police found no other evidence to implicate him. The local priest later testified that he had been drinking with Escobal and the vice-mayor at the time of the attack, and had seen Escobal pass out.²³² Nevertheless, police tortured Escobal into implicating four more men. Escobal later recanted, claiming that police had provided him with their names.²³³

Nevertheless, the faceless prosecutor formally accused Escobal and three of the men he implicated — Segundo Vásquez Huingo, Segundo Machuca Aguilar, and Walter Vásquez — of terrorism, and asked for twenty-five-year sentences. On June 15, 1993, all but Walter Vásquez, who was never arrested, were given sentences of between twenty to twenty-five years.²³⁴

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ HRW/Americas telephone interview, Dr. Rosa Quendena, FEDEPAZ, July 4, 1995.

²³⁰ HRW/Americas interview, Lima, July 21, 1994.

²³¹ We are reserving the source at their request. Case summary, July 1994.

²³² Declaration of Efraín Castillo Hervais, priest of the La Encañada parish, September 6, 1993.

²³³ Declaration by Emilio Escobal Lucano and Segundo Vásquez Huingo to Judge Jorge A. Salazar Guerrero, Cajamarca, October 2, 1993.

²³⁴ Case summary, July 1994.
Human Rights Watch/Americas

Subsequently, defense lawyers learned that an eleven-year-old boy who had participated in the attack told police that no one in the band was nicknamed Cuca. Police captured the boy after killing four of his companions, who were carrying the weapons seized at La Encañada.²³⁵

PROSECUTION OF HUMAN RIGHTS VIOLATIONS

The systematic and deliberate deprivation of rights represented by the faceless courts in Peru is only one side of the political manipulation of the justice system. For victims of human rights violations committed by government agents, justice is systematically denied as well. Until the amnesty law of June 1995 eliminated the possibility of prosecuting those responsible for human rights violations since 1980, the principal tool of impunity was the military court system, which guaranteed the most lenient treatment to all those brought before it for human rights crimes. Just as military courts cannot be considered independent and impartial when judging their battlefield enemy — those accused of terrorism or treason — they fail to meet this fundamental standard also when judging members of their own ranks accused of violating the rights of civilians. The secrecy of proceedings before military courts has protected this impunity.

The Fujimori Administration opened a disturbing new era in Peruvian jurisprudence when it not only subjected civilians to military jurisdiction but also tampered with the laws governing jurisdictional disputes between military and civilian courts, ensuring that the military would be able to cover up even the most heinous of crimes committed by its members: murder. The final disservice to victims of human rights violations was the promulgation of the amnesty law.

Before that law was passed, the dispute over which court should prosecute eleven military officers accused of disappearing and later murdering nine students and a professor from the Enrique Guzmán y Valle (La Cantuta) University was the most blatant demonstration of the lengths to which the Fujimori Administration would go to cover up the crimes committed by the military.

La Cantuta

As we described in an earlier report, the La Cantuta case began on the night of July 18, 1992, when armed men in military uniforms broke into the men's and women's dormitories. Nine students were blindfolded and loaded into vehicles. Nearby, soldiers detained Professor Hugo Muñoz at his home. By morning, all were disappeared.²³⁶

Evidence, eyewitness testimony, and information leaked by sources inside the military identified the soldiers as members of an elite death squad acting under the direct orders of high level military officers, including Gen. Nicolás de Bari Hermoza, Chairman of the Joint Chiefs of Staff and a Fujimori loyalist. Despite an active and at times darkly comical cover-up attempt, the government was forced to reverse itself and acknowledge possible military involvement after family members identified some of the remains buried in shallow graves on the outskirts of Lima.²³⁷

²³⁵ Ibid.

²³⁶ For a complete description of the La Cantuta case up to the discovery of the clandestine graves, see Americas Watch, "Peru: Anatomy of a Cover-up, The Disappearances at La Cantuta," *A Human Rights Watch Short Report*, Vol. V, No. 9, September 27, 1993.

²³⁷ Juan Zegarra Salas, "Llaves sí son de La Cantuta," *La República*, August 21, 1993.

Nevertheless, General Hermoza insisted that any investigation and trial belonged under military jurisdiction. While arguing to the press that the soldiers had acted of their own volition, albeit with military weapons, vehicles, and logistical support, at the same time General Hermoza clung to the completely contradictory assertion that the killings were acts of service and therefore subject to military discipline rather than civilian prosecution.²³⁸

Peru's military tribunals have a long and grim history of unwillingness to investigate or punish abuses. A letter by the Peruvian Embassy in Germany to the German Bundestag in 1992 said that of the eighty-three cases of military officers accused of human rights violations and sent to military courts from 1980 through May 1992, only five had reached a conclusion: four were dismissed and one resulted in a punishment. The letter did not provide further details.²³⁹ Human Rights Watch/Americas is aware of only two cases of human rights violations in which military courts handed down convictions: the massacre of 69 peasants in Accomarca in 1985 and the slaying of 15 peasants in Santa Bárbara in 1991. In the Accomarca case, a single officer was found responsible and given a suspended sentence of six years. In the Santa Bárbara case, a lieutenant was sentenced to ten years for abuse of authority and perjury.²⁴⁰

Nevertheless, Peru's Supreme Court has almost always ruled in favor of the military in disputes over jurisdiction, particularly in human rights cases. But the high profile of the La Cantuta disappearance and the international condemnation it roused meant that for the first time, a vote by justices in favor of civil jurisdiction — and an independent and potentially devastating investigation and trial — was a possibility. As the military refused to allow civilian prosecutors to question or even see the military officers who had supposedly been arrested in relation to the massacre, pressure for a vote in favor of civilian jurisdiction mounted.²⁴¹ In the case of the 1983 massacre of thirty-four men, women, and children attending a wedding party, a police lieutenant and ten non-commissioned officers were eventually convicted in a rare trial in civilian court, receiving prison terms ranging from ten to twenty-five years.²⁴²

The first civilian judge assigned to the case was reputedly linked to drug-traffickers, some of the military officers detained, and the National Intelligence Service (SIN), which was believed to have ordered the massacre. Instead of investigating the case, Judge Carlomagno Chacón appeared more interested in grilling family members about their sources of information. He was soon dismissed based on an investigation by the internal affairs department of the judiciary.²⁴³ As the civilian investigation became active, the military initiated parallel proceedings, giving way to a jurisdictional conflict which only the Supreme Court could resolve.

By law, four of the five members of the criminal chamber (*sala penal*) of the Supreme Court were required to settle a jurisdictional dispute. If the panel votes three to two, the deciding ballot is cast by a sixth judge, who ranks as an alternate to the five sitting justices. In the case of a tie, a second alternate casts the deciding vote.²⁴⁴

²³⁸ For a summary of the case, see APRODEH, *De la tierra brotó la verdad: crimen e impunidad en el caso La Cantuta* (Lima: APRODEH, September, 1994).

²³⁹ Coordinadora, "Tuyos, míos, nuestros," February 1994, p. 3.

²⁴⁰ Americas Watch, *Human Rights in Peru One Year After Fujimori's Coup*, pp. 39-40.

²⁴¹ APRODEH, *De la tierra brotó la verdad*, pp. 45-55.

²⁴² Americas Watch, *Human Rights in Peru After President García's First Year* (New York: Human Rights Watch, 1986), pp. 91-93.

²⁴³ *Ibid.*, pp. 46-47.

²⁴⁴ *Ibid.*, pp. 52-54.

Moisés Pantoja Rodolfo was one of the few judges who remained in place after the April 5, 1992, coup. A former high school teacher of President Fujimori's, he remained a close ally. When the votes were cast on February 3, 1994, Pantoja and two others voted in favor of military jurisdiction, arguing that since the accused were members of the armed forces acting in an area placed under emergency legislation, their crime should be considered an act of service.²⁴⁵

However, the remaining two justices supported civilian courts, maintaining that the kidnapping, forced disappearance, and murder of civilians are common crimes subject to the civilian penal code. As he deliberated, the alternate justice who was scheduled to cast the sixth vote was the target of a bombing threat as well as political pressure to support a military court martial.²⁴⁶

But before his vote was cast, the pro-Fujimori majority in the CCD introduced a surprise bill designed to change the voting procedure followed by the Supreme Court in deciding jurisdictional disputes. DL 26291 decreed that a simple majority among the five sitting justices would settle the matter. The bill would apply to not only future disputes, but disputes currently before the court without requiring a new casting of ballots.²⁴⁷ The only jurisdictional conflict facing the court at that time — and thereby affected by the law — was La Cantuta.

Introduced near midnight, when most opposition legislators, unaware of its existence, had left, the bill was passed by before dawn on February 8 and immediately dubbed by its opponents and the press as the "La Cantuta Law." The following day, the Coordinadora formally withdrew from a dialogue it had been sustaining with the government, declaring that "conversations are worth nothing when the political decision to guarantee impunity is a foregone conclusion."²⁴⁸

Within thirteen days, a military court had reviewed the 2,000-page case and convicted ten of the twelve soldiers, imposing sentences of between one to twenty years.²⁴⁹ The military court ruled out an investigation of General Hermoza, Gen. Luis Pérez Documet, or SIN head Vladimiro Montesinos, suspected of ordering the killings.²⁵⁰ Subsequently, General Pérez Documet was promoted to division general.²⁵¹

²⁴⁵ Since 1980, when the Shining Path declared war on the Peruvian state, much of the country has been placed under emergency legislation, which suspends key constitutional guarantees, give broad search and arrest powers to the security forces, and puts political control in the hands of the military. APRODEH, *De la tierra brotó la verdad*, pp. 52-54.

²⁴⁶ APRODEH, *De la tierra brotó la verdad*, pp. 52-54.

²⁴⁷ DL 26291, *El Peruano*, February 10, 1994.

²⁴⁸ Coordinadora, Press release, February 9, 1994.

²⁴⁹ The individuals accused of the crime were Gen. Juan Rivero Lazo, Col. Federico Navarro Pérez, Lt. Col. Manuel Guzmán Calderón, Major Santiago Martín Rivas, Major Carlos Pichilingüe Guevara, Lt. Aquilino Portella Núñez; technicians Eduardo Sosa Dávila and Juan Suppo Sánchez; and suboficiales Juan Sosa Saavedra, Julio Chuqui Aguirre, Nelson Carvajal García, and Hugo Corral Sánchez. Portella, who was in charge of the military base established at the university and identified the students to the men who abducted them, remains a fugitive. Guzmán, now a full colonel and head of General Hermoza's security detail, was acquitted. Suppo was later acquitted on appeal. "Condenan a 20 años de prisión a los mayores Martín Rivas y Pichilingüe," *La República*, February 22, 1994; and APRODEH, *De la tierra brotó la verdad*, pp. 38-43.

²⁵⁰ General Pérez Documet was in charge of the army's Special Operations Division and is believed to have been among those senior officers who approved the disappearance. (Cecilia Valenzuela, "Voces del juicio," *Caretas*, February 24, 1994, pp. 24-29, 67.) Although described by Fujimori as a volunteer adviser to the SIN, Vladimiro Montesinos is widely believed to run the agency and give orders to its titular head, Gen. Julio Salazar Monroe.

²⁵¹ *La República*, FBIS, January 6, 1995.

At the last minute, the more serious sentences were changed from years in penitentiary to prison, allowing the military to keep the convicts within military installations without dismissing them from active service or cutting their pay or benefits. Later press reports revealed the comforts of the convicts' prison regime, with tennis courts, cellular telephones, color televisions, a bar, and regular visits from family members and the army paymaster, who cashes their monthly checks, augmented with occasional bonuses, in dollars.²⁵²

To the press, President Fujimori characterized the sentences as "drastic and exemplary" and proof of the government's respect for human rights.²⁵³ After a march protesting the La Cantuta decision, four La Cantuta students were arrested and kept in incommunicado detention overnight, a move widely perceived as a threat to quell future marches.²⁵⁴

Bones recovered at the grave site and sent to England for DNA analysis in 1993 remain untested, apparently because the government has failed to pay the bill.²⁵⁵ After a prolonged battle to recover the remains found in the secret graves and kept by police, the La Cantuta family members were finally delivered in June 1994 fifteen tattered cardboard boxes containing dirt, animal and human bones, and trash for burial.²⁵⁶

The Amnesty Law and the Barrios Altos Case

The record of impunity amply demonstrates that in the eyes of Peruvian justice, the military is a privileged class. This reality became all the more evident when the CCD passed, in June 1995, one of the most sweeping amnesty laws in the hemisphere. The amnesty was hatched shortly after the surprise reopening by a Lima prosecutor of a case linked to the same government-sponsored death squad convicted of the La Cantuta disappearances.

On November 3, 1991, eight heavily armed men broke into an apartment building where a fundraising dance was being held in the Lima neighborhood of Barrios Altos. Their vehicles had police-style lights and appeared official. The men forced their victims to the floor, then shot them execution-style, using high-power weapons with silencers. Despite the fact that the building was next to the headquarters of police intelligence and around the corner from the local police station, no officers appeared until witnesses and some survivors begged for help. Fifteen were killed.²⁵⁷

²⁵² José Jara, "Militares del caso La Cantuta en `cárcel dorada,'" *La República*, March 25, 1994.

²⁵³ *Notimex*, FBIS, February 23, 1994.

²⁵⁴ "Aún se desconoce situación de 4 estudiantes detenidos por policías," *La República*, September 5, 1994; and HRW/Americas telephone interview with APRODEH, January 31, 1995.

²⁵⁵ HRW/Americas telephone interview with Amnesty International, London, October 28, 1994.

²⁵⁶ HRW/Americas interview, Gisela Ortiz (sister of La Cantuta Student Luis Ortiz), Lima, July 23, 1994.

²⁵⁷ "La Matanza de Barrios Altos," *Caretas*, November 11, 1991, pp. 31-35, 44; and Americas Watch, "Peru: Civil Society and Democracy Under Fire," *A Human Rights Watch Short Report*, vol. IV, Number 6, August, 1992, pp. 20-22; Human Rights Watch/Americas, July 1993, Vol. 7, No. 9

Preliminary investigations and information uncovered by journalists suggested that the men worked with military intelligence, used official vehicles, and may have included the same individuals convicted later of having disappeared the La Cantuta students.²⁵⁸ Nevertheless, the case remained dormant until Lima prosecutor Ana Cecilia Magallanes reopened it in April 1995, naming five army officers as responsible, including several already convicted in the La Cantuta case. Among the accused is Gen. Julio Salazar Monroe, head of the SIN.²⁵⁹ Judge Antonia Saquicuray Sánchez opened a formal investigation on April 19. As is customary, the military immediately ordered Judge Saquicuray to abstain from investigating the prosecutor's charge, claiming that the case was out of their jurisdiction since it involved active-duty military officers.²⁶⁰ Although she attempted to interview members of the death squad in prison, she was prevented from doing so by the military high command. Witnesses and survivors she interviewed received death threats.²⁶¹

Apparently to preclude any further attempt to investigate past crimes by the security forces, a pro-Fujimori deputy proposed an amnesty for members of the security forces or civilians linked to, investigated for, or convicted of human rights crimes from May 1980 to the present. Although the measure had not been announced publicly or debated, it passed soon after it was presented, in the early hours of June 14 and signed by Fujimori the next day.²⁶²

The amnesty goes well beyond any single case; it closes all investigations and judicial proceedings linked to human rights violations from May 1980 until the present. Its first article provides:

general amnesty to military, police, or civilian personnel, regardless of their military, police, or official rank, who are denounced, investigated, charged, prosecuted or convicted of common and military crimes in either the civilian or military court jurisdiction, for all events derived from, originating with, or resulting from the struggle against terrorism and which could have been committed individually or in a group from May 1980 until the date of promulgation of this law. [*Human Rights Watch/Americas translation*]²⁶³

The few convictions of security force members for human rights crimes were immediately overturned.²⁶⁴ Among the first to walk free were the eight men remaining in jail for the La Cantuta case. Their release prompted a Lima protest march.²⁶⁵

On June 16, Judge Saquicuray ruled that the amnesty law was inapplicable to investigations already initiated into the Barrios Altos massacre since the amnesty violated constitutional guarantees and Peru's international obligations

²⁵⁸ See, for instance, the "León Dormido" document and declarations by General Rodolfo Robles. Also, Mónica Vecco, "El SIN organizó el Grupo Colina," *La República*, September 15, 1994.

²⁵⁹ The men are Julio Salazar Monroe, Santiago Martín Rivas, Nelson Carbajal García, Juan Sosa Saavedra, and Hugo Coral Goycochea. Coral was not named in the La Cantuta case. "Fiscal acusa al jefe del SIN por asesinatos de Barrios Altos," *El Comercio*, April 21, 1995.

²⁶⁰ Coordinadora, "El caso de Barrios Altos debe ser juzgado en el fuero civil," May 19, 1995.

²⁶¹ APRODEH, "Contra la oposición de la sociedad y del poder judicial el regimen pretende consagrar la impunidad de los crímenes contra los derechos humanos," June 29, 1995.

²⁶² "Congreso aprueba ley de amnistía," *Expreso*, June 14, 1995.

²⁶³ In an apparent effort to appear balanced, the law also granted amnesty to retired military officers imprisoned since 1992 following trials violating basic due process rights and others recently convicted for criticizing the conduct of Peru's border war with Ecuador, convictions which violated those retired officials' freedom of expression.

²⁶⁴ DL 26479, *El Peruano*, June 15, 1995.

²⁶⁵ "Congress Ratifies Controversial Peru Amnesty," *Reuters*, June 29, 1995.

under the American Convention on Human Rights.²⁶⁶ After making her ruling, the judge reported receiving several anonymous telephone death threats. Prosecutor Magallanes has also reported receiving threats.²⁶⁷

To prevent other judges from questioning the amnesty further, on June 28, the CCD passed yet another surprise law prohibiting courts from reviewing it, claiming that it was their "right to extend favors" and obligating judges to grant the amnesty.

The following three cases illustrate the wall of impunity surrounding disappearance and murder by the security forces, even before the amnesty was passed.

²⁶⁶ Declaration by Judge Antonia Saquicuray Sánchez, June 16, 1995.

²⁶⁷ Amnesty International, Urgent Action 146/95, June 23, 1995.
Human Rights Watch/Americas

- Martín Roca**, a university student, was participating in a demonstration to protest cuts in student benefits on August 17, 1993, when he and other demonstrators noticed that two strangers were filming them. The students feared that the men were security force agents, and seized their video cassette. That night, one of the men came to Roca's house in the port city of Callao and demanded with threats the return of the video cassette. After Roca insisted that he did not have the cassette, the man called in DINCOTE agents and soldiers who had been waiting nearby. For three hours, the men searched the house, finding nothing. When the same man returned the following day, a Roca relative who was a police agent escorted him to the local police station, where he was identified as Operations Deputy Petty Office 3rd Class Percy Tarazona Esteves, a navy intelligence (DIN) officer. Realizing that their son's life was in danger, the Roca family hired a lawyer, who contacted high-level police and navy officers to assure them that Martín was not involved in illegal activities and did not have the video cassette. Martín voluntarily appeared at DINCOTE to answer questions. Nevertheless, the family began to notice that Martín was being followed. Although they requested guarantees from the appropriate authorities, none were extended. On October 5, 1993, Martín was "disappeared." Two months later, Keneth Ney Ansaldo Castro, one of the last to see Martín and scheduled to testify before the authorities, also disappeared. The local prosecutor formally accused DIN Operations Chief Commander Elías Manuel Ponce Feijoó of ordering the disappearance, but was not allowed to inspect DIN premises. The judge only ordered preventive detention for Tarazona at the naval hospital, arguing that his life was in danger in prison. Ponce was later freed. Meanwhile, the Navy has threatened to sue Roca and APRODEH, the human rights group handling the case, for defamation and false accusation. On November 21, the Callao Superior Court declared that there was insufficient evidence to merit investigating Ponce and Tarazona and ordered the case dismissed.²⁶⁸
- Luis Alberto Bonifacio Aymituma**, eighteen, was celebrating a friend's induction into the police force at a chicken barbecue on March 21, 1993, when soldiers attacked with machine guns, reportedly in a drunken attempt to seize some of the women. In the Lima shantytown where the attack took place, neighbors have long complained about army abuses. Aymituma was mortally wounded, and died several hours later after a botched operation to extract bullets from his abdomen. Despite numerous witnesses, ballistic evidence, and the support of human rights groups, the murder of Aymituma was denied by the army, which claims his death was the unfortunate result of stray shrapnel.²⁶⁹

²⁶⁸ HRW/Americas interview, Javier Roca Obregón (father), Lima, July 28, 1994; and Letter to HRW/Americas from APRODEH, January 25, 1995.

²⁶⁹ HRW/Americas interview, Aymituma family, Lima, July 18, 1994; and Letter to HRW/Americas from CEAPAZ, January 24, 1995.

- **Ernesto Castillo Páez**, a university student, disappeared on October 21, 1990, in the Lima municipality of Villa El Salvador. Despite evidence uncovered by the family and a judge indicating that Castillo was arrested by members of the National Police, then transferred to the custody of a bomb expert in charge of the police Training Center for the Special Assault Forces, there has been no serious investigation of the case. On March 20, 1991, the Supreme Court invalidated a writ of habeas corpus granted by the investigative judge, arguing that because witnesses fearful of police retribution did not provide officials with their complete names and addresses the writ was flawed. Five days earlier, noted human rights lawyer Augusto Zúñiga, representing the Castillo family, was seriously injured in a letter bomb attack. An appeal of the Supreme Court decision was before the Constitutional Guarantees Tribunal when Fujimori seized power and dissolved the Tribunal.²⁷⁰ The police commander suspected of disappearing Castillo was never fired. The investigation into the letter-bomb attack on Zúñiga has since been shelved. At the request of Human Rights Watch/Americas, the Center for Justice and International Law, and the Instituto de Defensa Legal, the Inter-American Commission of Human Rights has submitted this case to the Inter-American Court for trial.

SHINING PATH "POPULAR TRIALS"

Since Human Rights Watch/Americas began reporting on Peru, we have denounced acts perpetrated by guerrillas that violate international humanitarian law, including the practice of capturing, trying, and executing elected officials, members of civil defense groups (also known as *rondas campesinas*), and others accused or suspected of opposing their campaign to overthrow the government. The Coordinadora registered 173 selective assassinations of non-combatants by the Shining Path in 1994, many in the context of so-called popular trials.²⁷¹

The fact that the Shining Path has systematically murdered its opponents and critics is no secret. To the contrary, guerrillas have trumpeted what they term "selective annihilation" or "justice-making" (*ajusticiamiento*), particularly the murders of local authorities, including mayors, city council members, and candidates for elective office. Since 1981, over 800 elected officials and candidates have been killed by the Shining Path.²⁷²

Recent cases include the slaying of José Guerrero Santos, a local authority (*teniente gobernador*) in the village of Ingano Grande, department of Piura. Before abandoning Ingano Grande, guerrillas also killed Máximo Choquehuanca Velasco, a member of a local peasant patrol. In a similar manner, members of the Shining Path briefly held the peasant community of Sarín, department of La Libertad, on July 23, 1994, long enough to kill Wilfredo Crazado and Haydee Zamudio, engineers who worked with a government-sponsored environmental conservation project, and community president Angel Santillán.²⁷³

For the Shining Path, killing local authorities is an avowed policy:

We are growing and striking at authorities. We reaffirm that in this way the state apparatus is beheaded or paralyzed; some, the reactionaries and the opportunists in their chorus, say, "How is it possible to basely kill mayors elected by the people?" First it must be established that an election implies an instrument of the bourgeois democratic system, which is reactionary... Mayors, governors, or bureaucratic authorities, including those who work for [state-funded development groups] are part

²⁷⁰ HRW/Americas interview, Cromwell Castillo, July 17, 1994; and "El principal sospechoso," *Sí*, March 24, 1991, pp. 78-85.

²⁷¹ Letter to HRW/Americas from Coordinadora, January 18, 1995.

²⁷² "Ataques sin rumbo," *Caretas*, February 27, 1993.

²⁷³ Letter to HRW/Americas from the Coordinadora, January 31, 1995.

of the state system, of the reactionary structure. In addition, to hit at or behead state authorities or important bureaucrats slows the advance of the State and, more importantly, creates a power vacuum... So [to kill authorities] is good...²⁷⁴

Under international humanitarian law, local authorities are protected against attack because they are civilians.

Local authorities and members of peasant patrols are not the Shining Path's only targets, however. Other victims include community, religious, and human rights activists, development workers, teachers, party dissidents, and peasant leaders.

Many of the thousands of murders carried out by guerrillas since they began their war in 1980 were the result of lightning attacks on villages, farms, or roads. Others took place after guerrillas held a so-called popular trial, or public execution, in areas they controlled, albeit for a matter of hours. Because they make a pretense at justice, we address the guerrillas "popular trials" in this report.

²⁷⁴ Translation by HRW/Americas. Central Committee of the Communist Party of Peru (Shining Path), "¡Elecciones, no! Guerra popular, sí!" *El Diario*, No. 598, February 8, 1991. Human Rights Watch/Americas

The so-called trials are convoked suddenly. A charge can be specific, like passing information to the army; or vague, like expressing discontent with Shining Path rules. On October 12, 1993, for instance, Shining Path members took the village of Chingol, department of Cajamarca, seized five community leaders, and declared them guilty of collaborating with the government. The men were then executed in front of their families.²⁷⁵

In Peru's central jungle, where the Shining Path retains control of some river valleys, human rights groups have collected testimonies indicating that anyone who publicly criticized the Shining Path or attempted to flee Shining Path control was punished severely or killed. Repeatedly, Shining Path commanders ordered whole families killed before the community so that they 'serve as an example'.²⁷⁶

These executions violate Common Article 3 of the Geneva Conventions which governs internal conflict.²⁷⁷ Article 3 imposes fixed legal obligations on the parties to an internal conflict for the protection of persons not, or no longer, taking an active part in hostilities. Those protected by this Article include all wounded, sick, or captured combatants and individual civilians, even if the latter had fought for or indirectly assisted the opposing party by providing intelligence or other logistical support. Thus, whether they are combatants or civilians, members of peasant patrols, mayors and local officials, or other suspected government collaborators, they must be afforded the mandatory protection of Article 3 by the Shining Path.

With regard to these people, Paragraph 1(d) of Article 3 absolutely prohibits the rebels from:

the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized people.

Moreover, the obligation to apply Article 3 is absolute for the Shining Path and independent of the same obligation on the government. Breaches of Article 3 by the government, no matter how egregious, do not permit rebels to violate Article 3.

²⁷⁵ Coordinadora, *Human Rights Situation in Peru* (Lima: Coordinadora, February 1994), p. 17.

²⁷⁶ *La repetición de la violencia* (Centro Amazónico de Antropología y Aplicación Práctica: Lima, 1994), p. 7.

²⁷⁷ Article 3 automatically applies to situations of internal armed conflict. The application of Article 3 does not affect the legal status of parties to a conflict, nor does it confer any special status on the armed opposition.

So-called popular trials by the Shining Path lack fundamental fair trial guarantees at every level. There are no set charges, procedures for arrest or detention, hearings, possibility for a defense, or protection against abuses. Despite the appearance of depending on decisions made by communities, in fact, charges, trials, sentencing, and punishment is almost always carried out by the guerrillas themselves, with those in the crowd forced to attend on threat of their own death. In a cruel twist, the execution of those deemed guilty is often relegated to a child militant or even a family member of the condemned, forcing them to prove allegiance to the party by murdering a loved one.²⁷⁸

The Shining Path should immediately cease these executions since the group not only ignores due process, but aggressively and often violently prevents those in their power from defending themselves or, indeed, defending their lives.²⁷⁹

Fortunato Collazos

Like many of his neighbors in the Lima shantytown of Juan Pablo II, on the night of September 13 Fortunato Collazos went to bed expecting to celebrate in the morning the sixth anniversary of the founding of their shantytown, tucked up one of the dry Andean foothills that surround Lima. At dawn, however, over fifty Shining Path militants descended on his flimsy home, built of scrap wood, cardboard, and large straw mats, with deadly purpose.²⁸⁰

Apparently, they had a grudge against Collazos, a welder, who also served as a town council member. A month earlier, Collazos had refused to let a group with ties to guerrillas use the community loudspeaker.²⁸¹

Collazos met them at the door with a shovel. His wife managed to escape by pushing her way through the back wall, made of straw. A neighbor, also a council member and alerted by the noise, tried to defend Collazos from the gunmen, who accused him of thwarting revolution. Someone in the mob executed Collazos with a gunshot to the head; the neighbor was stoned to death.²⁸²

Sister Irene MacCormack

A native of Perth, Australia, and a thirty-five-year veteran of the Sisters of Saint Joseph order, Sister Irene MacCormack moved to Huasahuasi (Junín) in 1989 from a mission house in Lima, where she had worked for eight years. There, she had helped organize a soup kitchen and taught catechism to children. In her new home, she scheduled baptisms, ran the choir, and would often walk far into the countryside to give catechism lessons.²⁸³

Soon after MacCormack arrived, the mission began receiving threats from the Shining Path, and missionaries left for a month. After they returned, the Shining Path killed a man they accused of giving information about their activities to the authorities and left his body on the town's central square. Over the following year, however, the missionaries continued their work in peace.²⁸⁴

²⁷⁸ For instance, Sister Aguchita Rivas, condemned in La Florida, Junín, after a "popular trial" on September 27, 1990, was reportedly killed by a seventeen-year-old. Her crime was "distracting children with sweets," referring to her habit of giving candy-cooking classes to children. Author interview, Pompeyo Rivera, La Merced (Junín), December 15, 1990.

²⁷⁹ For more on quasi-judicial proceedings by rebel groups, see Americas Watch, *Violation of Fair Trial Guarantees by the FMLN's Ad Hoc Courts* (Human Rights Watch: New York, 1990).

²⁸⁰ Author interview, community leaders, Juan Pablo II (Lima), September 15, 1991.

²⁸¹ Ibid.

²⁸² Ibid.

²⁸³ Author telephone interview, Sister Angela Carroll, Sisters of Saint Joseph, Lima, June 7, 1991. Sister Angela's account is based on eyewitness testimony and interviews with villagers as well as missionaries in Huasahuasi at the time.

²⁸⁴ Author telephone interview, Sister Angela Carroll, Sisters of Saint Joseph, Lima, June 7, 1991.

The peace ended on May 21, 1991, when about sixty guerrillas occupied the town. According to witnesses, guerrillas arrived with a list bearing the names of town authorities and "the nun." Villagers assumed they wanted Mary Stevenson, known as Sister Dorothy, who worked closely with area mothers' clubs and distributed food donated by Caritas, the Catholic relief agency.²⁸⁵

But Sister Dorothy had traveled the day before to Lima for medical reasons. Although guerrillas asked the whereabouts of another missionary, a priest, he was never found. Alone in the convent, MacCormack became the target. For security reasons, the nuns had agreed to open the convent door only to people they knew. So when MacCormack failed to open the door despite repeated demands, guerrillas shattered a window with a rifle butt and threatened to blow up the house.²⁸⁶

Guerrillas brought MacCormack to the square, where villagers had already been forced to assemble. Face down in the dirt were five men: Noé Palacios Blancas, fifty-four, president of the neighbors' association; Agustín Vento Morales, sixty, responsible for buying a parabolic antenna for the town; Alfredo Morales Torres, fifty-six, former vice-mayor; Pedro Pando Llanos, president of the peasant patrol; and a man who had been slow to open the bank on demand.²⁸⁷ Witnesses say the guerrilla leader railed against the authorities while teenagers painted graffiti on the church. Meanwhile, a group of girls attempted to hide MacCormack in the crowd.²⁸⁸

Their attempt was in vain. Guerrillas allowed the man who had not opened the bank quickly enough to leave. Although some villagers tried to argue that MacCormack should not be killed since she was not an American but an Australian, the guerrillas declared her guilty of "maintaining vagrants with free food" and making "brutes of people as a Yankee imperialist." They shot MacCormack in the head along with the four town authorities.²⁸⁹

Over the next year, the Shining Path took responsibility for the murders of an Italian priest, an Italian lay worker, and two Polish priests in separate locations throughout northern Peru. Guerrillas left a sign on the bodies of the Poles that read: "Death to those loyal to imperialism, let the dog preachers die."²⁹⁰ *El Diario*, the Shining Path newspaper, justified the killings, claiming that "these weren't two good little Franciscan missionary priests, because the 'thousand eyes and ears of the Party' proved that they were agents of imperialism disguised as priests and wrapped up in charity work, attempting to halt the advance of the masses."²⁹¹

A more detailed justification was contained in the Shining Path pamphlet "On the Two Hills" (*Sobre las dos colinas*) and released by the party's central committee in 1992. Quoted at length is the papal encyclical *Centessimus Annus* by Pope John Paul II, termed "part of the imperialist, revisionist, reactionary offensive." The killings of religious workers was justified, the document asserted, because they "actively opposed the bringing of justice [killing] of black heads [government collaborators], and directed subsistence feeding programs that benefitted the peasant population."²⁹²

The Central Jungle

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ "Terroristas matan a religiosa australiana y cuatro campesinos," *La República*, May 23, 1991.

²⁸⁸ Author telephone interview, Sister Angela Carroll, Sisters of Saint Joseph, Lima, June 7, 1991.

²⁸⁹ Ibid.

²⁹⁰ "Muerte a los fieles del imperialismo, que mueran los perros predicadores."

²⁹¹ IDL, *En el oscuro sendero de la guerra* (Lima: Instituto de Defensa Legal, 1992), pp. 56-57.

It was in Peru's central jungle that the Shining Path hoped to begin its Maoist "New Society" among the indigenous people known as the Ashaninka. The Ashaninka live along the lengths of the Ene and Tambo Rivers, and number over 50,000. Hundreds of colonist families, most from the southern highlands, have also carved out farms in this rugged area.²⁹³

The guerrillas had a simple message: join, leave, or be killed. Ashaninkas say those who refused to join were threatened or murdered in so-called popular trials. Ashaninkas themselves would be forced to fire the fatal shot — or worse, kill a family member or friend with a machete, to prove their loyalty. Since state control of the area was tenuous at best, many simply agreed out of fear for their lives. Others fled, abandoning their farms.²⁹⁴

In some cases, guerrillas killed whole families for defying them.²⁹⁵ Another method of gaining control was the murder of local leaders. In March 1989, guerrillas murdered Isais Charete, the president of the only independent Ashaninka federation in the Ene.²⁹⁶ A year later, guerrillas killed four more leaders at Cutivireni, a Franciscan mission.²⁹⁷ Along the Tambo River, guerrillas murdered Pablo Santoma Santos, an Ashaninka leader and mayor of the local district, on July 22, 1990. Two others were kidnapped and killed days later.²⁹⁸ Guerrillas also kidnapped children, training them as soldiers even as they used them as hostages to force their parents to cooperate.²⁹⁹

Indeed, since the Shining Path launched its war against the Peruvian state in 1980, its leaders have defied any and all exhortations to curb or punish abuses by their subordinates. Instead, shining path leaders exalt the cold-blooded murder of their ideological foes in open defiance of human rights values. While the scope of the group's violent abuses has been greatly reduced since the capture of its leader Abimael Guzmán, the nature of its behavior remains unchanged.

U.S. POLICY

The Clinton administration, as noted above, adopted an innovative approach towards the issues addressed in this report by the creation of a special commission of international jurists to study the administration of justice in the aftermath of Fujimori's coup. The jurists selected combined expertise in a range of areas, including criminal prosecution of terrorists, human rights, and international law. Their rigorous and thorough report detailed the violations of Peru's international obligations inherent in the anti-terrorism laws and the restructuring of the judiciary after the coup and recommended steps Peru should take to prosecute terrorists without violating due process.

Shortly after the commission's first visit to Peru, the government modified some of the more flagrantly abusive aspects of the anti-terrorism laws. However, the government subsequently refused to cooperate with the project, even though it had agreed to the formation of the commission and accepted the individual members. When the commission members traveled to Lima in December 1993 to present privately their conclusions, Justice Minister Fernando Vega Santa Gadea refused to meet with them. The government dismissed the report as a sign of Yankee imperialism after its publication in March 1994. And although officials assured the State Department's senior policymaker for Latin America, Ambassador Alexander Watson, in early 1994, that they would cease trying civilians in military courts by the end of that year, this has not happened.

²⁹³ Author interviews, Cutivireni, Quimpiri, and Puerto Ocopa, July 8-14, 1991.

²⁹⁴ Ibid.

²⁹⁵ See for instance, Francisco Reyes, "800 campesinos escapan del yugo senderista," *La República*, July 31, 1991.

²⁹⁶ Author interview, Asociación de Indígenas de la Selva Peruana (AIDSESP), Lima, June 4, 1991.

²⁹⁷ For a firsthand account of the destruction by the Shining Path of Cutivireni, see Mariano Gagnon (with William and Marilyn Hoffer), *Warriors in Eden* (New York: William Morrow and Co., 1993); and Gustavo Gorriti, "Terror in the Andes," *New York Times Magazine*, December 2, 1990, pp. 40-45, 48, 67-69.

²⁹⁸ Mónica Vecco, "Ashaninkas luchan contra senderistas," *La República*, November 5, 1991.

²⁹⁹ Author interview, Concilio Nacional de la Amazonía Peruana, Lima, December 4, 1990; and Mónica Vecco, "Subversivos enrolan a niños asháninkas," *La República*, November 6, 1991.

Faced with a sharply nationalistic reaction to the commission's report, U.S. policymakers have retreated to quiet diplomacy on the issue of faceless courts. Senior officials argue that openly pressuring the government to abandon practices which violate due process rights is counterproductive.

The government's defiant rhetoric notwithstanding, practically every positive human rights step taken under Fujimori has been the result of international pressure. The commission of jurists organized by the Clinton administration, while rejected by its intended recipients, undoubtedly is in large part responsible for the limited reforms the Peruvian government has undertaken so far. We remain convinced that further public pressure will be indispensable to bringing to an end the use of these unfair courts.

In an important departure from its preferred quiet diplomacy, the State Department issued a strong statement condemning the amnesty law promulgated in June 1995. The June 15 statement by spokesman Nicholas Burns reads in part:

At three in the morning on June 14, the Peruvian congress passed legislation granting amnesty to all military, police, and civilian personnel who committed civil or military crimes in the counterinsurgency effort since May 1980. We are deeply concerned at both the substance of the amnesty law and the peremptory manner in which it was passed. We regret that President Fujimori has signed the bill into law. Doing so demonstrates to the world a lack of serious commitment to the protection of human rights, a principle on which there is broad hemispheric consensus.

The law is lamentably at odds with other recent actions by the government of Peru that had demonstrated a greater responsiveness to human rights concerns....Most significantly, however, this law will allow the release of those responsible for the July 1992 La Cantuta university massacre, who are to date the most well-known military officers convicted of human rights abuses during the war on terrorism. In addition, it will put a stop to the ongoing investigation in the November 1991 Barrios Altos massacre....

We urge the administration to follow up this strong statement with a suspension of all aid to the security forces, including military training and anti-narcotics assistance to the police. Such a suspension is warranted considering the government has adopted an official policy granting them impunity for gross human rights violations.

Furthermore, we urge the administration to deny visas to any members of Peru's military or political forces reliably believed to have participated in serious human rights violations such as torture, disappearances, or extrajudicial execution as long as those individuals are protected from prosecution by the amnesty.

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ACRONYMS

APRODEH	Pro-Human Rights Association (<i>Asociación Pro-Derechos Humanos</i>)
CCD	Democratic Constituent Congress (<i>Congreso Constituyente Democrático</i>)
CEAPAZ	Peace Study and Action Center (<i>Centro de Estudios y Acción para la Paz</i>)
COFADER	Committee of Families of the Detained, Disappeared, and Refugees (<i>Comité Nacional de Familiares de Detenidos, Desaparecidos y Refugiados</i>)
DESCO	Center for the Study and Promotion of Development (<i>Centro de Estudios y Promoción del Desarrollo</i>)
DINCOTE	Anti-terrorism police (<i>Dirección Nacional Contra el Terrorismo</i>), also abbreviated as DIVCOTE or JECOTE outside of Lima
DL	Decree Law (<i>Decreto ley</i>)
DS	Supreme Decree (<i>Decreto supremo</i>)
FEDEPAZ	Ecumenical Foundation for Development and Peace (<i>Fundación Ecuémica para el Desarrollo y la Paz</i>)
ICRC	International Committee of the Red Cross
IDL	Legal Defense Institute (<i>Instituto de Defensa Legal</i>)
MRTA	"Túpac Amaru" Revolutionary Movement (<i>Movimiento Revolucionario "Túpac Amaru"</i>)
SIN	National Intelligence Service (<i>Servicio de Inteligencia Nacional</i>)

Human Rights Watch/Americas

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