

PERU

@Eight years of "disappearances"

Although a pattern of "disappearance" was first detected in Peru in early 1983 the frequency of its occurrence increased to such proportions that from 1987 onwards, more cases of "disappearance" have been reported to the United Nations Working Group on Enforced or Involuntary Disappearances, from Peru than from any other country. Amnesty International has reports of over 3,500 cases of prisoners who "disappeared" after detention by members of the security forces since the phenomenon was first reported. The real number is believed to be far higher. According to information received by Amnesty International, during the first 11 months of the government of Alberto Fujimori (from July 1990 to June 1991), 121 "disappearances" were reported. Of these, 15 victims were subsequently released and 24 were found dead. The remaining 82 people are still "disappeared".

In the Peruvian case the practice of "disappearance" is not associated with a military dictatorship characterized by total disregard for the rule of law. It is a practice that has taken place under three governments of different political persuasions, all of whom had been democratically elected. The practice has been tolerated by these three governments and is used by the military and police in the counter-insurgency campaign against the armed groups that are active in the country. Amnesty International is opposed to the "disappearance" of prisoners in all cases, irrespective of the reasons which led to their imprisonment.

CONTEXT OF HUMAN RIGHTS VIOLATIONS

Human rights violations in Peru take place within a context of political violence carried out by armed opposition groups, particularly the clandestine *Partido Comunista del Perú*, "*Sendero Luminoso*", the Communist Party of Peru, "Shining Path". This group has had a political presence in the country since the early 1970's. Its main armed actions have been concentrated in the Andean mountains and Amazonian basin, and to a lesser extent in some urban areas. Shining Path has been responsible for the murder of captives in summary execution-type killings, sometimes after torture and mock trials. Apart from police and armed forces' personnel, victims have included members of the governing parties and the opposition coalition *Izquierda Unida*, United Left, professionals working on government sponsored projects as well as members of peasant communities who refuse to support Shining Path. The group defines its strategy as a need for a prolonged war using the peasants as their main fighting force.

The *Movimiento Revolucionario Tupacamaru*, MRTA, is a smaller armed opposition group that started in the early 1970's, whose first armed action took place in June 1984. This group is more willing to negotiate with other political parties but is also responsible for

numerous violent actions and while there have also been reports of killings perpetrated by MRTA members, the numbers are considerably less than those attributed to Shining Path.

According to the Senate Commission on Pacification's report of January 1991¹, during 1990 there were 3,346 politically motivated killings, 1,512 of which the Commission attributed to Shining Path and 68 to the MRTA.

Amnesty International is fully aware of the context in which human rights violations carried out by the state take place in Peru: they include a high level of violence on the part of the armed opposition groups and a severe economic crisis. However, Amnesty International works within the framework of international law as it concerns the human rights obligations of governments. It does not treat non-governmental groups as if they had the status of governments or address them unless they have *de facto* attributes of government, including the exercise of effective power over substantial territory and population.

STATES OF EMERGENCY

Detentions by the armed forces usually take place in areas that are under state of emergency and political-military administration. The pattern of detentions has remained largely unchanged since December 1982.

A political-military command was created in December 1982 in the city of Ayacucho to administer 13 provinces in the departments of Ayacucho, Apurímac and Huancavelica that had been placed under state of emergency. The command was located at the army's Los Cabitos barracks. The number of political- military commands increased rapidly. By May 1991, about two thirds of the country was under state of emergency and. With the exception of Lima and Callao these areas were also under political-military control.

Article 231 of the Peruvian Constitution allows for the suspension of the constitutional guarantees of personal liberty, right to privacy, right to assembly, movement in areas under state of emergency. It also states that while a state of emergency is in force the army may take over internal control of the area, should the President order it. When this occurs the area is governed by an armed forces political-military command.

In June 1985 Congress passed law 24.150, which granted the armed forces' political-military commands virtual autonomy from civil authority. This, together with Article 231 of the Constitution, created the conditions for a situation where the armed forces feel free to carry out detentions without notifying civil authorities or accounting for the fate of the detainees.

¹ A special multiparty commission was created by the Peruvian Senate in 1988 to analyze the causes of violence. The commission has issued two reports, the second of which was published in January 1991.

Detentions in the emergency zones are carried out without warrants and are systematically denied by the authorities of the political-military commands. Sometimes detentions are acknowledged after prolonged secret detention and interrogation. In these cases detentions are only acknowledged to have occurred as of the date the captives are transferred from military to police custody, when public prosecutors are informed about their detention. The armed forces as a rule do not acknowledge having held prisoners prior to the transfer to the police.

Detentions leading to "disappearances" in the emergency zones are often carried out openly, by uniformed troops, or by clearly identified civil defence patrols, organized and led by the army. Many of these detentions are carried out after troops have assembled entire peasant communities for identity checks. In many cases community members recognize the detaining officers and know their pseudonyms. The armed forces' use of pseudonyms has become common practice in the areas that are under state of emergency and facilitates the violation of human rights. The refusal of the armed forces authorities to reveal the names of the detaining officers to relatives, lawyers or even the provincial prosecutor contravenes the **United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment**, approved by the United Nations General Assembly in December 1988. This document establishes international legal and humanitarian standards against which the treatment of persons under any form of detention or imprisonment may be assessed. Principle 12 c) of this document states that in all cases of detention the authorities shall record and make available the reasons for the arrest; the time of the arrest and the taking of the arrested person to a place of custody, as well as his/her first appearance before a judicial authority; the identity of the law enforcement officials concerned and precise information concerning the place of custody.

Another cause for concern in the emergency zones is the apparent lack of control by the authorities over the field actions of the soldiers. Amnesty International has received many denunciations of women claiming to have been victims of rape perpetrated by troops in active service. The theft of animals and other goods from peasants during house searches by the security forces is also frequently reported. Torture is also widely reported in the emergency zones, where detainees may often be subjected to long-term detention by the military and security forces.

Church and human rights groups in the country, have complained to the government about the state of emergency being imposed in some areas. In a letter to President Fujimori dated 22 February 1991, the Vicarios de la Solidaridad (solidarity curates) of Puno, Ayaviri and Juli, in the department of Puno, complained about a decree imposing a state of emergency in their area for 60 days, at a time when "terrorist subversion has diminished". They stated that during a 30 day state of emergency declared in October 1990 very serious

abuses had been perpetrated by the military against innocent civilians and supplied a long list of such abuses. The Vicarios de la Solidaridad claimed:

"The state of emergency restricts basic rights of the people and leaves room for those in charge of law and order to commit abuses outside the state of emergency laws, thus increasing the climate of fear and terror, a situation which Sendero Luminoso exploits to intimidate and justify their cause".

FATE OF THE "DISAPPEARED"

As noted, detentions are generally acknowledged only when prisoners are transferred to the custody of the police and public prosecutors are formally notified. Prisoners initially feared "disappeared" are often warned before their release not to talk about their experiences and are threatened with death if they do so. In defiance of the threats, some released prisoners have been known to inform relatives of other "disappeared" people of the whereabouts of their missing relative. There have also been cases in which lower grade officers and soldiers of army barracks unofficially informed people that their relative was being held inside. In spite of the above, when confronted with this additional information the authorities often officially refuse to acknowledge the detention and only in a few cases have these persons later been released.

Those who "reappear", alive or dead, may be dumped from an army vehicle. No record exists of their ever having been detained. Some of the "disappeared" become victims of summary extrajudicial executions or death under torture and their bodies are subsequently found abandoned in the countryside, sometimes in mass graves.

One such incident occurred in September 1990, when a group of peasants in the Santiago de Pischa and San José de Ticllas districts, Huamanga province, Ayacucho department, "disappeared" after detention. Reports indicated that a group of peasants had been detained on 21 and 22 September 1990 by a combined group of civil defence patrols and soldiers from the Castropampa military base, led by two officers using the pseudonyms of "Centurión" and "Tigre". These detentions reportedly followed an attack by the Shining Path on the Cangari Civil Defence Committee.

On 23 September, when relatives went to the Castropampa military base, the officer named "Centurión" is said to have denied any army knowledge of the detentions. On 18 October, 18 bodies were exhumed from three mass graves in Chillcahuaycco, Santiago de Pischa, 17 of which were identified as being amongst the group detained on 21-22 September. The graves had been discovered on 6 October by relatives of the "disappeared". The exhumation took place in the presence of a prosecutor, a judge, some police officers and 0 doctors. On 25 February 1991, Clodomiro Chávez, Fiscal Encargado de la Defensoría

del Pueblo, Special Attorney for the People's Defence, announced that a judicial investigation had been initiated into the events leading to the discovery of the mass grave. He reportedly stated that during his visit to Ayacucho he had found conclusive evidence that an army sergeant who he identified by name, but who was otherwise known as "Centurión", was responsible for the killings.

WHO ARE THE "DISAPPEARED" ?

Victims of "disappearance" may or may not be linked to any of the armed groups that are active in the country. There are reports of members of peasant communities who claim to have been forced at gunpoint to shelter or even carry out jobs for armed groups and are then detained by the security forces and accused of terrorism. In other cases members of legal groups are "disappeared" for no reason other than their questioning of government practices. One such case is that of Angel Escobar Jurado, leader of the Comisión de Derechos Humanos de Huancavelica, Human Rights Commission of Huancavelica, described below. Reports have also been received of people who "disappeared" after approaching a military barracks in search of a detained relative.

The following are some of the "disappearance" cases that have come to the attention of Amnesty International during the last 24 months.

Angel Escobar Jurado, 37-year old secretary of the Human Rights Commission of Huancavelica and leader of the Federación de Comunidades Campesinas de Huancavelica, the Federation of Peasant Communities of Huancavelica, was detained in February 1990 as he left the office of the Human Rights Commission in the town of Huancavelica. A witness saw five men dressed in plain clothes, but "of military appearance", taking Angel Escobar across a bridge that leads to an army barracks. One of the five has since been seen in military uniform. At the time of his abduction, Angel Escobar is believed to have been about to report 30 new cases of "disappearance" to the authorities.

On 1 March a habeas corpus petition was presented on his behalf, but the judge declared it improcedente (unfounded), on the grounds that there was no clear evidence of the detention. Police and military authorities of the region have refused to acknowledge his detention. Angel Escobar had previously been detained by the Policía de Investigaciones del Perú, as was then called the Peruvian investigative police, when serving as a local councillor.

Bernardina Salazar, 22, several months pregnant, was detained with six other people in the village of Chaclampa on 21 March 1990 by soldiers from the Pampachiri base in Chaclampa, Andahuaylas province, Apurímac department. The seven people had reportedly been forced to participate in an incursion into the village of Chaclampa by members of the Shining Path who then abandoned the village. The seven detainees were

reportedly taken to the Andahuaylas barracks and on 27 March 1990, six were then released. They claimed to have been ill-treated during their detention. They also said that Bernardina Salazar was not released with them, that they waited till nightfall outside the barracks but that she never came out. When her husband approached the Fiscal Provincial, the Provincial Public Prosecutor, the latter told him that he had signed Bernardina Salazar's release document, but that he could not verify that the detainee had been released.

Roberto Vivanco Quintana, of Abancay, Apurímac department, was detained at his home by members of the armed forces in September 1989. He remained "disappeared" for 52 days, until he managed to escape. According to his testimony, he was first taken to the Abancay military barracks and after three days was transferred to the military barracks in Ccapaya, Chalhuanca, Aymaraes, where he was held for 49 days.

During his 49 days in the Ccapaya barracks Roberto Vivanco claimed to have been subjected to severe torture including being hung by his feet, being submerged in a water tank until near asphyxiation, having a rope tied around him whilst being dragged along the ground, being beaten and having his denture broken. After his escape Roberto Vivanco remained many months in hiding until he managed to leave the country and now lives abroad as a political refugee.

Amnesty International had previously heard of cases where detainees were reportedly taken to the Ccapaya army barracks and who subsequently "disappeared". One of them is that of 15-year-old Elisa Allca Lima, detained by soldiers in Quisquipata, near Abancay, on 8 June 1989. Although released detainees claim to have seen her inside the Ccapaya barracks, the military authorities have refused to acknowledge her detention and her whereabouts remain unknown.

On 1 April 1990 the body of Falconieri Saravia Castillo, 46-year-old president of the Confederación Agraria de Huancavelica, Agrarian Confederation of Huancavelica, was found in a wood, about 10 km outside the city of Huancavelica, Huancavelica department. His throat had been cut. Two weeks earlier, on 16 March, while on his way to a municipal meeting, Falconieri Saravia was detained by an armed member of the military dressed in plain clothes. The detention was witnessed by his 18-year-old son who followed him at a short distance and saw a well-known member of the army take his father to the political-military command of Huancavelica. The military authorities refused to acknowledge the detention.

Constantino Saavedra Muñoz, agricultural engineer, trade union and municipal leader in the Ayacucho area, was detained on 1 April 1990 by soldiers at his home in the city of Ayacucho. According to reports he was taken to the Los Cabitos military barracks. Other people detained with him who were later released, claimed to have seen him inside the

barracks. He had previously been detained in July 1987 but was released some days after the detention.

Godofredo Huachaca Oroz, 28, approached the military barracks of Chuquibambilla, in the department of Apurímac on 17 November 1988, to inquire about his father Damian Huachaca Cahuana, who had been detained by members of the army earlier that day and whose detention was not being acknowledged. He was detained at the same barracks in the presence of two of his brothers. His and his father's whereabouts remain unknown and their detention has not been acknowledged.

DIFFICULTIES IN INVESTIGATING "DISAPPEARANCES"

The 1991 report on Peru of the United Nations Working Group on Enforced and Involuntary "Disappearances" mentions the "wide latitude granted by the central Government to the armed forces and the police in fighting subversion and the institutional paralysis pertaining with respect to the protection of human rights in the emergency zones, where prosecutors were obstructed in their efforts to follow up on denunciations of disappearances, and the judiciary seemed ill at ease with habeas corpus proceedings and also lacked cooperation from the respondents."

The difficulties of the courts in dealing with the habeas corpus procedure may be illustrated with the following example; the first time that a habeas corpus petition was upheld by two lower courts since 1983.

On 21 October 1990 22-year-old sociology student, Ernesto Rafael Castillo Páez, "disappeared" after reportedly being detained by the police in Villa El Salvador, one of Lima's poor neighbourhoods. The case received wide publicity when a habeas corpus petition was upheld by two lower courts and the judge of one of them stated that he had observed serious irregularities at the police station where the student was believed to have been taken. However, the Supreme Court annulled the habeas corpus on grounds of procedural irregularities. Dr Augusto Zúñiga Paz, the lawyer of the student's family, was warned that the police might seek reprisals against him, and, although he informed the authorities of this, no specific measures of protection were offered to him. On 15 March 1991, a letter bomb was sent to Dr Augusto Zúñiga's office at the Commission of Human Rights which blew off his left hand and forearm.

IMPUNITY

The United Nations General Assembly Resolution 33/173 adopted in 1978 calls on governments "in the event of reports of enforced or involuntary disappearances, to devote

appropriate resources to searching for such persons and to undertake speedy and impartial investigations". Resolution 33/173 specifically calls on governments "To ensure that law enforcement and security authorities or organizations are fully accountable, especially in law, in the discharge of their duties, such accountability to include legal responsibility for unjustifiable excesses which might lead to enforced or involuntary disappearances and to other violations of human rights".

Since "disappearances" were first reported in Peru, Amnesty International has initiated actions concerning 842 cases of reported "disappearances". Although the Peruvian authorities have initiated investigations into "disappearance" cases, particularly during the period that Dr Escobar was the special attorney in Ayacucho, proceedings are not known to have resulted in any convictions.

LACK OF ACCESS TO MILITARY CAMPS AND BASES

An important obstacle to the investigation of "disappearances" is the fact that public prosecutors and the judiciary are routinely denied access by the armed forces to military camps and bases in which prisoners are being held.

It was only during the short period during which Dr Carlos Escobar was appointed to serve as Special Commissioner to investigate "disappearances" in the department of Ayacucho that this was not the case. He was appointed to this post by the then Attorney General in August 1987. Dr Escobar's brief was later extended to include Apurímac and San Martín departments. The decline of unresolved "disappearances" in 1987 coincided with the efforts of the special commissioner's team to take urgent action on detainees, immediately upon receiving reports of unacknowledged detentions. In some cases in 1987 the team was able to enter the rural army bases and identify hitherto unacknowledged detainees, resulting in them being turned over to the courts or released. Although criminal charges brought by the Public Ministry against members of the security forces did not result in trials and convictions, a significant improvement in the situation in Ayacucho and Apurímac was observed. However, apparently, the commissioner's investigation into the Cayara incidents of May 1988 (in which over 29 villagers of Cayara, Ayacucho department, were reportedly killed by members of the army) was the object of military obstruction and hostility, and in November 1988 the Public Ministry ordered the closure of its office in Ayacucho. The Cayara investigation also resulted in death threats against members of the team of investigators and their families and the "disappearance" or extrajudicial execution of

nine surviving witnesses to the killings.² Dr Escobar apparently did not feel safe in Peru and left the country to seek political asylum abroad.

The Ayacucho Office of the Public Ministry was later re-opened but there has been a lack of political will on the part of the authorities to make the security forces account for their actions. On 30 January 1990 for example, the Supreme Council of Justice of the Armed Forces ordered the definite archiving of the investigation that had been initiated into the Cayara incidents. Finally, another contributing factor to impunity is that military officers believed to be responsible for human rights violations are tried by military tribunals.

Military courts that exercise jurisdiction over police and military personnel are not known to have convicted any member of the armed forces in active service in the emergency zones for human rights violations.

PERU'S INTERNATIONAL COMMITMENTS

At present, there are no internationally approved treaties or conventions that typify "disappearance" as a specific crime and establish rules to sanction and prevent its occurrence.

The main international treaties dealing with rights abrogated in the context of a "disappearance" are the American Convention on Human Rights and the International Covenant of Civil and Political Rights. Both instruments were ratified by Peru in 1978. Articles 101 and 105 of the Peruvian Constitution grants constitutional status (*jerarquía constitucional*) to international human rights treaties.

The following articles of the American Convention on Human Rights are relevant to "disappearance":

Article 1 (1) states:

The States Parties to the Convention undertake to respect the rights and freedoms recognised herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

² At the request of Amnesty International and Americas Watch, in May 1990 the Organization of American States' Inter-American Commission on Human Rights granted a hearing on the Cayara massacre case. The case was later referred to the Inter-American Court on Human Rights.

Article 7 states:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

Peru ratified the International Covenant on Civil and Political Rights in 1978, which was opened by the General Assembly of the United Nations in 1966 for signature. Article 2, Section 3 of the International Covenant on Civil and Political Rights states:

Each State Party of the Present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 9, Section 4 of the Covenant states:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.