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Peru: The "anti-terrorism" legislation and its effects - an unfinished business in the transition to democracy

Introduction

Since April 1992, when new "anti-terrorism" legislation entered into force in Peru under the government of Alberto Fujimori, Amnesty International has expressed its deep concern that hundreds of men and women have been falsely charged with "terrorism-related" offences and imprisoned unfairly. In Peru these prisoners, who have been falsely imputed as having links to the armed opposition groups, are commonly known as *"presos inocentes"* – "innocent prisoners". Amnesty International considers these prisoners to be prisoners of conscience [1] and has continuously urged the authorities to release them immediately and unconditionally.

Now, after more than ten years since the "anti-terrorism" legislation came into effect, scores of prisoners of conscience and possible prisoners of conscience remain imprisoned in Peru. Amnesty International believes that the release of all of these men and women who are serving unfair prison sentences for "terrorism-related" offences they have not committed must be a priority under the current government's human rights policy. Since Alberto Fujimori left office in November 2000, both subsequent governments – the transitional government which ruled until August 2001 and now that of Alejandro Toledo, the current President – have pledged to protect and respect fundamental human rights. However, this commitment remains unfulfilled and scores of people continue to languish in prison for crimes they did not commit.[2]

In addition, the legislation implemented in 1992 to combat "terrorism" did not provide guarantees of a fair trial for those tried under it. Consequently, thousands of political prisoners [3] have been denied due process consistent with international fair trial standards.

[1] Amnesty International defines "prisoners of conscience" as people detained anywhere for their belief or because of their ethnic origin, gender, colour, language, sexual orientation, national or social origin, economic, birth or other status, provided they have not used or advocated violence.

[2] For more cases of prisoners of conscience in Peru adopted by Amnesty international see *Peru: Prisoners of Conscience – Appeal Cases,* AMR 46/005/2003, May 2003.

[3] Amnesty International defines "political prisoners" as those whose case has a significant political element. This may include the motivation for the prisoner's acts, the acts in themselves or the motivation of the authorities in imprisoning them. Amnesty International demands that political prisoners receive a fair trial within a reasonable time, in accordance with the internationally recognized right of all prisoners to a fair and prompt trial or to be released. The term "political prisoner" includes

The legacy of a decade of contempt for human rights during the internal armed conflict.

"Innocent Prisoners"

Since 1992 Amnesty International has documented hundreds of cases of people unfairly charged with "terrorism-related" offences. The total population imprisoned for "terrorism" almost doubled in 1992 when new "anti-terrorism" legislation came into force.

Although official figures are not always available, according to reports, between 1992 and 1993 the number of detainees rose from 713 to over 4,200 cases. In total from 1992 to 2000, 21,855 people were detained on charges of "terrorism" in Peru. [4] Of those detained between 1992 and 2000, 6,075 were released by the police or the armed forces because their investigations showed no evidence of them having had any links to the armed opposition.

The armed opposition groups: Shining Path and the MRTA

The systematic violation of human rights in the context of the 1992 "anti-terrorism" legislation occurred against a background of widespread human rights abuses by *Sendero Luminoso*, SL (Shining Path), Peru's principal armed opposition group. In addition to conducting armed operations against the security forces, Shining Path was responsible for thousands of civilian deaths and frequently tortured and killed its captives. Similar abuses, on a lesser scale, were attributed to the *Movimiento Revolucionario Túpac Amaru*, MRTA (Revolutionary Movement Túpac Amaru).

Shining Path carried out its first violent action - burning electoral registers and voting boxes - in the village of Chuschi, Ayacucho Department, on the eve of presidential elections in May 1980. During the 1980s and the early 1990s Amnesty International regularly received reports of atrocities attributed to Shining Path in what was to become a regular pattern of gross human rights abuses, including torture and killings of civilian captives. Most of the victims were members of peasant communities who were either suspected of collaboration with the military or else refused to join or support Shining Path. They were often killed after mock trials conducted before forcibly assembled villagers. The victims included hundreds of mayors and other local state officials, community leaders, agronomists, engineers, and administrators working on government and independent development projects. Political and trade union activists who did not support the ideology and practices of Shining Path were also systematically threatened and killed. Many of these victims died in massacres in which a total of thousands of civilians and combatants on both sides were killed, many of them under circumstances which suggest they were summarily executed.

With the implementation of President Alberto Fujimori's counter-insurgency strategy and the arrest of the leadership of Shining Path and the MRTA in 1992, both groups began to suffer major set -backs. Today, according to the latest reports received by Amnesty International, the MRTA is virtually extinct and Shining Path is only active in areas of Junín Department and in the Alto Huallaga region in Huánuco Department in the districts of Leoncio Prado, Marañón and Huamalies; and in San Martín Department in Tocache province.

Throughout the 1980s and 1990s, the years the armed opposition was most active in Peru, Amnesty International repeatedly and unequivocally condemned the grave human rights abuses by these two armed opposition groups.

both prisoners of conscience and those who have resorted to criminal violence (or have been accused of other ordinary crimes) for political motives. However, it is only for prisoners of conscience that Amnesty International demands immediate and unconditional release.

[4] Ernesto de la Jara Basombrío, *Memoria y Batallas en Nombre de los Inocentes, Perú 1992 – 2001*, 2001, p. 295-296.

Of the 15,780 remaining persons, over 65% were acquitted by the courts by 1999, confirming a "catch-all" policy under the new counter-insurgency policy during the first half of the 1990s.[5] By 1999, over 1,100 people had been pardoned by the president or acquitted by the courts.[6] By the year 2000, 2,786 remained in high security prisons.

By 1992 the internal armed conflict between the Peruvian state and the armed opposition groups, which had seen violence increasing steadily since the early 1980s, had reached an unprecedented level that saw the majority of the population affected by state of emergency measures. In response to this situation, in April 1992 the Peruvian government introduced by decree tough "anti-terrorism" laws in an attempt to end the threat of insurgency and ensure the state's control over the national territory. The legislation fell far short of international fair trial standards and its implementation led to abuses and violations of the most fundamental human rights of individuals.

The new counter-insurgency strategy implemented by former President Alberto Fujimori in 1992 differed markedly from those of previous governments. Fujimori's administration developed and strengthened the use of civil patrols and the intelligence services and enacted these new and wide-ranging "anti-terrorism" laws.

The authorities asserted that this new strategy would overcome some of the major problems in the fight against the armed opposition, which President Fujimori's government claimed were inherited from previous administrations. These problems included a corrupt judiciary; a failure to defeat the armed opposition; a failure to secure conviction of armed opposition suspects who had been detained; and, in the case of those prisoners who were convicted of "terrorism-related" offences, the handing down of prison sentences which the government claimed were too lenient.

Once the new counter-insurgency strategy was in place the government was faced with the necessity of demonstrating that it was effective. One way in which the authorities attempted to do this was to parade newly-arrested suspects before the television cameras or publish their photographs in the newspapers, dressed in striped prison uniforms. Another technique was to publicly contrast the relatively low number of arrests and convictions during the period 1980 to 1992 with the high number of arrests and convictions after the new legislation came into effect in May 1992.

[5] Idem.
[6] Ibid, p. 232

Amnesty International believes that in the drive to demonstrate the success of the new counter-insurgency strategy the authorities became more interested in securing convictions than in following fair trial procedures enshrined in international law. As a result, hundreds of detainees in Peru were falsely accused and convicted of "terrorism-related" crimes.

Amnesty International recognizes the right of the state to protect the security of its citizens. However, abuses on the part of groups such as Shining Path and the MRTA can never justify the violation of fundamental human rights by the state. In the words of the United Nations Human Rights Committee: "Recognizing that the Government has a duty to combat terrorism, the Committee considers that the measures taken to do so should not prejudice the enjoyment of fundamental rights enshrined in the [International] Covenant [on Civil and Political Rights]".[7]

The "anti-terrorism" legislation which came into effect in 1992 did not guarantee these fundamental rights and provided a legal framework that made it possible to unjustly charge and convict persons. For example, the broad definition of "terrorism-related" offences, under Decree Law N°25475, which was the first of a set of "anti-terrorism" decrees issued in 1992, lacks precision. Those accused of these crimes range from those who "carry out acts against the life, physical integrity, health, freedom and security of individuals", to those who, *"by whatever means"* (Amnesty International's emphasis), incite the commission of "terrorism-related" crimes, or are seen to favour or excuse such crimes. In addition, those accused of being members of an armed opposition group, whether in their capacity as leaders; or by engaging or aiding in operations designed to attack and kill may be charged with "terrorism-related" offence of "treason" which was tried in military courts.

The use of an imprecise definition of "terrorism-related" provides a framework in which persons can be found guilty of an offence without there being clear evidence of their having committed a crime.

[7] See Document UN CCPR/C/79/Add.23, par.8.

Amnesty International believes that this broad and imprecise description of "terrorism-related" offences allowed for the arbitrary arrest of those who were critical of the authorities in order to silence opponents. The organization has documented cases of "innocent prisoners" who were detained by the security forces or the military as a form of reprisal for their criticism of the armed and security forces or the government, including those who were identified with left-wing groups, journalists, victims of human rights violations and their relatives who sought justice.

Widespread arrests without evidence also particularly affected those living in areas where the armed opposition was highly active, such as Ayacucho Department. Inhabitants of areas on the outskirts of Lima, the capital, such as Raucán, Los Olivos or Carretera Central were also likely to be linked to the armed opposition after it increased its

Zenón Cirilo Osnayo Tunque

On 29 August 1992, Zenón Cirilo Osnayo Tunque was detained by the police on suspicion of having collaborated with Shining Path as a messenger between rural and urban areas and of being implicated in the killing of two people in February 1991. He was also accused of being a Shining Path leader in Huancavelica Department and of having taken part in other attacks, including the killing of eight people in 1991.

On 4 July 1991, Zenón Osnayo's wife and two daughters, six and three years old respectively, as well as his wife's parents were killed after being detained by the military in Santa Barbara, Huancavelica (see Amnesty International Annual Report 1992). After this event Zenón Osnayo filed several complaints against the military. There are concerns that the charges brought against Zenón Osnayo may be an attempt to force him to drop his case against the military. According to reports, only one member of the military was charged for the killing of Zenón Osnayo's family. This person was acquitted of the murder charge by a military court in February 1993 and charged with abuse of authority and sentenced to 10 years' imprisonment.

When Zenón Osnayo was arrested in August 1992, he informed the police that he had been threatened and forced to carry messages for Shining Path. He also willingly informed the police that in February 1991 he had been taken by Shining Path members to Antaragra mountain, Yanaslla sector, Huancavelica Department**,** where the armed opposition killed two people: a woman who was already dead when Zenón Osnayo got there and a man who he was forced to watch being killed. According to reports, Zenón Osnayo was told: "*así es como mueren los que no obedecen*" ("that is how those who do not obey die"). He also stated that he had been forced to throw a stone at the man to make sure he was dead and that when he refused he was beaten and forced to bury the bodies.

According to reports, a "repentant" had also stated that Zenón Osnayo had once visited him at his home accompanied by five other individuals, one of whom was carrying a gun. However, the "repentant" did not provide further evidence to support his accusation.

During the trial, the prosecution was not able to prove whether Zenon Osnayo's account of the killing of two people in 1991 was true. No exhumation of remains or forensic tests were carried out at the scene of the alleged crimes. The judge in charge of the case stated, however, that investigations into the case had been properly, despite the fact that important procedures which would have constituted a better investigation into the facts were not followed.

Regarding the second charge against Zenón Osnayo for allegedly being a Shinning Path leader in Huancavelica Department and having taken part in other attacks in 1991, the only evidence given against Zenón Osnayo was the testimony given by a "repentant". The "repentant" apparently accused him of having taken part in several attacks. However, the dates given in her testimony were reportedly wrong. For instance, the "repentant" accused Zenón Osnayo of being implicated in the death of eight civilians in August 1991. However, the authorities claimed that the attack had taken place in 1987. Moreover, none of the witnesses to the attack could identify Zenón Osnayo as one of the assailants. In addition, another of the attacks that Zenón Osnayo was accused of committing by the same "repentant" took place in January 1993, several months after Zenón Osnayo had been detained in August 1992 (see the case of Gregorio Hilario Quispe who was also implicated in this case).

Nonetheless Zenón Osnayo was sentenced to 25 years' imprisonment. He is serving his sentence in Huamancaca prison, in Huancayo.

Prior to his arrest, Zenón Osnayo worked as a cattle breeder in Huancavelica, which was one of the areas most affected by the internal armed conflict.

Zenón Osnayo's case has been presented to the Pardon Commission established by President Alejandro Toledo

presence in these areas.

Those living in these areas not only suffered high levels of violence, but many were also forced under threat of death to collaborate with Shining Path or the MRTA, which was not taken into account as a mitigating factor during trials. During the internal armed conflict members of the armed opposition often used violence and intimidation to force communities to collaborate. According to Article 20.5 of the Peruvian Penal Code, a person is not legally responsible of an illegal act if (s)he is in real and unavoidable danger which may put at risk his/her life, physical integrity or freedom, if (s)he committed the act to safeguard himself/herself from danger or someone closely related to him/her (unofficial translation by Amnesty International).

Moreover, as Shining Path routinely infiltrated members into universities to identify possible new supporters, students in universities which the authorities considered under the influence of the armed opposition, such as

Justo Dagoberto Alvarado Alva

Justo Dagoberto Alvarado Alva was detained by the "anti-terrorism" branch of the police, *División contra el Terrorismo*, DIVICOTE (Division against Terrorism) on 13 July 1996, in the hamlet of Nuevo Horizonte, Padre Abad, Pucallpa, in Ucayali Department. He was accused of being a Shining Path member and of having taken part in the killing of four of his neighbours on 20 December 1989.

According to the information received by Amnesty International, on 17 December 1989, Justo Alvarado was playing football with some of his neighbours when a group of armed people, who identified themselves as Shining Path members, arrived at the pitch. Justo Alvarado and his neighbours were tied up and taken in a van to San Alejandro, Ucayali Department. Four of the kidnapped men were separated from the group and accused of belonging to the MRTA. The rest were returned safely to the hamlet.

Three days after this incident, the same group of armed men returned to the hamlet and forced everybody to meet on the pitch. Once there, they shot the four men whom they had previously accused of being MRTA supporters in front of everybody in the hamlet. The assailants then threatened some of the villagers with death if they did not become Shining Path delegates in Nuevo Horizonte.

Justo Alvarado, who is married and father of six children, feared for his safety and that of his family and did not oppose the intruders' orders.

Seven years later, in 1996, Justo Alvarado was detained and charged with being the Shining Path member who accused the four neighbours of Nuevo Horizonte of belonging to MRTA and of ordering their execution. During the search of his house, police officers did not find any evidence to link Justo Alvarado to the armed opposition. According to reports, the only evidence against Justo Alvarado was the testimonies of the father of one of the men killed and of the wife and the sister of two other victims. They both identified Justo Alvarado as the person who gave the order to kill them. Both testimonies were taken seven years after the events took place. In addition, these witnesses also accused other people of having been the ones who committed the crime.

According to witnesses to the killings, Justo Alvarado had not taken any part in the events of December 1989. Moreover, according to inhabitants of the hamlet of Nuevo Horizonte, including local authorities, Justo Alvarado never took part in any activities linked to the armed opposition or any other violent or punishable activities. Justo Alvarado has never denied being appointed as a Shining Path delegate by force. However, he has always denied having taken part in any activities related to the armed opposition.

In July 1997, Justo Alvarado was sentenced to 15 years' imprisonment for "terrorism-related" offences.

Before his arrest, Justo Alvarado had lived in Nuevo Horizonte since 1978 with his wife and children. He worked as a peasant and had no criminal record previous to his arrest in 1996. He is serving his sentence in Pucallpa prison, in Ucayali Department.

His case was presented to the *Ad hoc* Commission established by former President Alberto Fujimori in 1996, but that Commission did not review his case before its mandate ended. The case was transferred to the National Council for Human Rights at the Ministry of Justice in 1999 as a priority case. The case is currently pending before the Pardon Commission established by Alejandro Toledo in August 2001.

Huamanga, La Cantuta, Huancayo or San Marcos were also considered suspects and therefore more likely to be detained. Professionals such as doctors and lawyers who treated or represented alleged armed opposition members were also frequently detained on suspicion of collaborating with the armed opposition.

The fact that thousands of people were arrested and imprisoned for "terrorism-related" crimes they had not committed, with the acquiescence of the majority of the Peruvian population, can be partially explained by the increasing sense of insecurity and fear of violence in the country in the context of the internal armed conflict. This persuaded the majority of Peru's inhabitants that tough measures needed to be implemented to end internal violence.

For years the extent of the problem remained irrelevant to most of the Peruvian population because many of those wrongly imprisoned belonged to sectors of the population which historically have been the most vulnerable and discriminated against. Most of the men and women unfairly detained were from the poorest sectors of society, the majority of them indigenous people, peasants or other non-qualified workers and students from lower class backgrounds, and most of them from rural areas. According to reports, over 40 per cent of those detained had only primary education, over 40 per cent of those pardoned between 1996 and 2000 were peasants and 36 per cent were illiterate.[8]

The lack of economic resources of most of those detained also meant that they could not afford to pay a lawyer and had to be represented by legal aid lawyers employed by the Ministry of Justice. In a country with a population of 26.1 million, there are, according to figures from the Ministry of Justice, currently just 260 legal aid lawyers, 108 of them in Lima. Legal aid lawyers lack adequate resources and most lack training which means that the quality of the defence is often deficient in comparison to that which a private lawyer could provide.

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There were other features of the legislation which contributed to the unfair detention and imprisonment of suspects.

One of these features was the introduction of a law known as the *Ley de Arrepentimiento* (Repentance Law). This law was in force between May 1992 and November 1994. The Repentance Law provided benefits, including a reduced sentence, for those members of the armed opposition who renounced violence, distanced themselves from the armed opposition and supplied information leading to the capture of other members. Such legislation obviously opened the way for people to give false testimony against others in order to reduce their own sentences.

[8] Defensoría del Pueblo, *La labor de la Comisión Ad-hoc a favor de los inocentes en prisión*, 2000, p. 133-134

According to the Peruvian Ombudsman's Office, more than 8,300 people benefited from this law.

The *Reglamento de la Ley de Arrepentimiento*, Repentance Law Regulations, which came into effect in May 1993, stated that "the police have the responsibility of verifying the information supplied by the applicant". However, the police often failed to comply with this regulation and this law opened the door to further arrests which were unsupported by evidence. Many people were either detained or had arrest warrants issued against them solely on the basis of statements made by those making use of the Repentance Law's provisions, some of which were obtained under torture.

Amnesty International has documented scores of cases of people detained in these circumstances. By 1994 the authorities had begun to acknowledge that there was a problem with the accusations made by the "repentants". In March 1994 the then Special Prosecutor for "terrorism-related" crimes stated that information supplied by

Gregorio Hilario Quispe

On 7 July 1995, Gregorio Hilario Quispe was detained and charged with being a Shining Path leader.

According to reports, the only evidence against Gregorio Hilario was the testimony given by two repentants against him. One of them accused him of being a Shining Path leader in Huancavelica Province. A second repentant accused him of forcing him to collect money for the armed opposition.

However, according to reports, there were serious irregularities in the manner in which the first repentant was asked to identify Gregorio Hilario Quispe. The person was not asked for a description of Gregorio Hilario Quispe, nor was Gregorio Hilario Quispe paraded with other people in front of the person for identification. Instead, Gregorio Hilario Quispe was taken to a room where the person was being interrogated and asked whether he was the man they were looking for.

There were also reportedly serious inconsistencies in the testimony of this repentant. For example first she stated that Gregorio Hilario Quispe was a leader of Shining Path, but later this was changed to him only providing his house as a refuge to Shining Path members. She stated that Gregorio Hilario Quispe had taken part in three attacks, one of them in 1993; although she had testified that she had had no links with the armed opposition since 1992. Another attack is supposed to have taken place in 1987, four years before she had any involvement with the armed opposition, according to her own testimony. A third attack was supposed to have taken place in 1991, but according to the police investigation this attack took place in 1993 (see the case of Zenón Cirilo Osnayo Tunque who was also accused of having taken part in this attack).

Despite these inconsistencies, on 19 August 1997, Gregorio Hilario Quispe was sentenced by a military court to 30 years imprisonment for the "terrorism"-related offence of "treason".

Previous to his arrest, Gregorio Hilario worked as a craftsman. He is currently serving his sentence in Huamancaca prison, in Huancayo.

In January 1998, his case was presented for to the *Ad hoc* Commission established by Alberto Fujimori but it was not reviewed before the commission's mandate ended. The case was transferred to the National Council for Human Rights as a priority case (see Defensoría del Pueblo, *La labor de la Comisión Ad-hoc a favor de los inocentes en prision*, p 182). The case is currently pending before the Pardon Commission established by Alejandro Toledo.

"terrorists" who had repented had to be checked painstakingly because some of it had been false and had led to the detention of innocent people.

In addition, between 1992 and 1995, depending on the complexity of the case, a detainee could be held in total incommunicado for up to 10 days during the pre-trial investigation. This could be done without a judge's authorization. Detainees could be held for up to 15 days without charge, and for a further 15 days in the case of the offence of "treason".

Under prolonged detention detainees were often tortured and ill-treated to force them to confess. Amnesty International has documented thousands of cases of torture and ill-treatment of people charged with "terrorism-related" offences in the context of the internal armed conflict. Human rights organizations in Peru have reported that more than 70 per cent of those charged with such offences have alleged that they were subjected to torture, including rape, and ill-treatment.[9] Many of those detained who were later acquitted or pardoned and released were also subjected to torture and ill-treatment. According to the Peruvian Ombudsman's Office, 38 per cent of those pardoned by the *Comisión Ad-hoc* (*Ad hoc* Commission)[10] stated that they had been tortured while in pre-trial detention, including cases where a medical report confirmed the torture but was not taken into account at the trial.

In the case of the "terrorism-related" offence of "treason", civilians were tried by military courts. The Inter-American Commission stated back in 1993 that military courts are special and purely disciplinary courts for the purpose of maintaining discipline in the military and the police and ought therefore to apply exclusively to those forces.[11]

In addition, between 1992 and 1997, all "terrorism-related" offences were tried before so-called "faceless judges" (*jueces sin rostro*), in trials that were not public. These judges sat behind tinted glass and talked to the defendants through microphones which distorted their voices. Amnesty International has learned that on many occasions the defendant was unable to hear what was being asked and that trials lasted only a few minutes with little if any time to present a defence.

Also, between 1992 and 1993 the right to *habeas corpus* was suspended. *Habeas corpus* is one the most powerful legal remedies in cases of unlawful detention or

[9] *Instituto de Defensa Legal, ¿Quiénes son los Inocentes?*, 1997, p.25.
[10] For an explanation of the *Ad hoc* Commission established by Alberto Fujimori see pages 9 and 10 of this report.
[11] See 1993 Annual Report of the Inter-American Commission of Human Rights, OEA/Ser. I/II.85.doc. 9 rev. 1994, at 507, (Peru).

where detainees' rights have been violated, guaranteeing detainees the right to have a court decide without delay the lawfulness of their detention.

The legislation stated as well that police and military officers involved in the arrest and interrogation of suspects of "terrorism-related" offences could not be called as witnesses and cross examined during the trial; and until November 1993, lawyers were prohibited from defending more than one client charged with "terrorism-related" offences at a time.

The Pardon Commissions: the authorities acknowledge abuses.

Out of all the thousands of prisoners who were charged and/or convicted under the "anti-terrorism" legislation, hundreds were falsely charged with "terrorism-related" offences. Amnesty International has documented over 1,100 cases of prisoners of conscience and possible prisoners of conscience since 1992.

In August 1996, following national and international pressure, the government of Alberto Fujimori publicly recognized that mistakes had been made and that there were cases of people unfairly convicted of "terrorism-related" offences imprisoned in Peruvian jails. The former President then established a commission, known as the *Ad hoc* Commission,[12] in charge of reviewing cases of people convicted of "terrorism-related" offences and recommending them for presidential pardon if there was insufficient evidence against them. The Commission's mandate came to an end in December 1999. Between 1996 and 1999 more than 500 "innocent prisoners" were pardoned and released after the Commission recommended their cases for a presidential pardon. In total the Commission identified over 1,100 people who had been unfairly imprisoned, including those who were released by the courts or before their trial.[13]

[12] The *Ad hoc* Commission was established by the Peruvian authorities in August 1996 to review cases of prisoners falsely charged or convicted of crimes of "terrorism". The Commission had the power to propose that the President of the Republic grant a pardon in those cases where it was evident that there has been a miscarriage of justice. The Commission was formed by three members: The President of the Commission, who was the Ombudsman (*Defensor del Pueblo*), the Minister of Justice and Father Hubert Lanssiers, a priest and human rights activist who has been visiting prisons in Peru for over 30 years. From 1 January 2000, the National Council for Human Rights (*Consejo Nacional de Derechos Humanos*), which is a dependency of the Ministry of Justice was put in charge of reviewing all the cases of prisoners falsely charged or convicted of crimes of "terrorism".

[13] Ernesto de la Jara Basombrío, *Memoria y Batallas en Nombre de los Inocentes –Perú 1992-2001*, 2001, p. 232-233.

However, the problem of the "innocent prisoners" had not been solved by the time this Commission's mandate ended at the end of 1999, despite statements by government authorities that there were no more "innocent prisoners" in Peru.

At the end of its mandate the Commission recommended a further 35 people for a presidential pardon and a further seven people only needed the approval of one of the Commissioners, the Minister of Justice at the time, in order to be pardoned. However, not all of these prisoners were released during Alberto Fujimori's last months in office.

Another 240 cases were transferred as priority cases to the *Consejo Nacional de Derechos Humanos* (National Council for Human Rights). However, this Council which operates within the Ministry of Justice never reviewed any cases.

After November 2000, when Alberto Fujimori left office amid allegations of fraud and corruption, the transitional government which took over made the issue of the protection and promotion of human rights a main priority of its short administration and the problem of the "innocent prisoners" returned to the political agenda. A newly formed *Comisión de Indulto,* (Pardon Commission)[14] was established by President Valentín Paniagua in November 2000 and in the following year more than 300 people unfairly convicted of "terrorism-related" offences were pardoned and released. This Pardon Commission's mandate ended when Valentín Paniagua left office.

'Innocent prisoners' under the current government: a priority for the transition to democracy which is still unfulfilled.

When the current President, Alejandro Toledo, came to power in August 2001, he created a new Pardon Commission in charge of reviewing cases of people detained for "terrorism-related" offences.

Over 90 people have been released since this Commission was established in August 2001. However, Amnesty International is extremely concerned that the process of reviewing cases and releasing people who are victims of miscarriages of justice has been unacceptably slow. For instance, there were no releases between May 2002 and October 2002. By the end of March 2003, 21 prisoners of conscience adopted by Amnesty International remained incarcerated. This figure represents only a small fraction of the probable total of prisoners falsely charged with "terrorism-related"

[14] The Pardon Commission was formed by the then Peruvian Ombudsman, Wilfredo Pedraza Sierra, Father Hubert Lanssiers , who had also taken part in the *Ad hoc* Commission under Fujimori's administration; and Ernesto de la Jara Basombrío, the director of a local human rights organization, *Instituto de Defensa Legal* (IDL).

offences who remain in Peruvian jails. National human rights organizations consider that there are scores more, some which they have already documented and others which have not yet had access to human rights defenders.

The resources and number of lawyers allocated to the Pardon Commission established under President Alejandro Toledo has been reduced over the course of time. This has limited the efficiency of the Commission and has delayed the revision of cases. The Commission informed Amnesty International in 2002 that there were at least 1,800 cases which had to be reviewed. Amnesty International considers it paramount that adequate resources and personnel are granted to the Pardon Commission so as to enable them to review all the cases which are still pending. It is unacceptable that under a government which prides itself on respecting and promoting human rights, the voice of people who have spent years in prison for a crime they did not commit is not heard.

Harsh prison conditions

Prison conditions in maximum security prisons, where those charged with "terrorism-related" offences are held, are harsh and in some circumstances amount to cruel, inhuman and degrading treatment. Challapalca prison in Puno Department remains operational despite calls from the Inter-American Commission on Human Rights and international non-governmental organizations, including Amnesty International, for it to be closed permanently. The prison is more than 4,600 metres above sea level, and is extremely cold. The inaccessibility of the prison seriously limits prisoners' right to maintain contact with the outside world, including with relatives, lawyers and doctors.

In February 2003, the Inter-American Commission on Human Rights called again on the Peruvian authorities to close Challapalca prison. In addition they also stated that the high security prison of Yanamayo in Puno department, which is 4,100 metres above sea level, should be closed. In January 2003 the Yanamayo prison was reopened after undergoing building works and 97 prisoners convicted of "terrorism-related" offences were transferred there from other prisons.

These prisoners not only should be released immediately and unconditionally, but their criminal records should be deleted; they should receive adequate compensation and their reinstatement into society has to be facilitated. The majority of those who have already been released report that they are discriminated against due to their imprisonment and are therefore isolated and experience difficulties in finding jobs, continuing their studies and finding a home for themselves and their families.

Unfair trials for political prisoners

The 1992 "anti-terrorism" legislation not only provided a framework for the detention and imprisonment of prisoners of conscience, but it also rendered all trials for those charged with "terrorism-related" offences as unfair. Thousands of political prisoners have been tried under this legislation; all have received an unfair trial and on occasions, they were convicted to very harsh sentences for having sympathised with the armed opposition some time in their past without having used violence. Since the legislation came into effect, Amnesty International has urged the Peruvian authorities to review this legislation in order to bring it into line with international human rights standards for a fair trial.

Some political prisoners have been retried following national and international pressure. Lori Berenson, a US citizen sentenced to life for the crime of "treason" by a military court in 1996 was retried in a civilian court in 2001 and sentenced to 20 years' imprisonment. This ruling was appealed by the defence. However, on February 2002 the Supreme Court upheld the sentence. Her case had been submitted by Lori Berenson's defence to the Inter-American Commission on Human Rights. The Inter-American Commission concluded in July 2002 that her second trial had also been unfair. The Commission also recommended that the "anti-terrorism" legislation be reformed so that it abides by rights enshrined in the American Convention on Human Rights. Lori Berenson's case is now before the Inter-American Court who will have to rule for or against the Peruvian state.

The Inter-American Court of Human Rights has already ruled that Peru's "anti-terrorism" legislation violates fair trial standards enshrined in the American Convention on Human Rights. In 1999 it ruled that five Chilean nationals accused of the "terrorism-related" offence of "treason" did not receive a fair trial under this legislation and ordered the government to retry them and to reform the legislation to ensure that all people under its jurisdiction receive a fair trial as enshrined in the American Convention on Human Rights. Two years earlier the Court ruled that "the Peruvian State violated Article 8(4) of the American Convention with Ms. María Elena Loayza Tamayo's trial in the civil jurisdiction for the same facts of which she had been acquitted in the military jurisdiction"[15]. María Elena Loayza was detained in 1993 and tried by a military court for "treason" under the "anti-terrorism" legislation. She was acquitted of the crime of "treason" and sentenced for crimes of

[15] See Inter-American Court's ruling on María Elena Loayza Tamayo case (petition Nº 11.154), 17 September 1997.

"terrorism" in a civil court with "faceless judges". The Inter-American Court ordered her release. The Peruvian authorities released her to comply with the Court's ruling.

Latest Developments

In January 2003, the Constitutional Tribunal's ruled that life imprisonment and for military courts to try civilians for the "terrorism-related" crime of "treason" were unconstitutional. Following this ruling, between January and February 2003 President Alejandro Toledo, the Minister of Justice and the President of the Council of Ministers have issued a series of decree laws to conform to the Constitutional Tribunal's ruling. The decree laws annul the sentences handed down by military courts for the crime of "treason" and order that all those tried under military courts be retried in civilian courts. The decree laws also order the retrial of all those tried by "faceless judges" and modify the length of the sentences which can be applied under the anti-terrorism legislation. Amnesty International welcomes these new developments but remains concerned that the definition of terrorism related offences continues to lack precision. By the end of April 2003, the organization had not been able to assess what effect these latest decrees would have on fair trials for all political prisoners and for the release of all those falsely charged with "terrorism-related" offences. However, by the time this report went to print, there were signs that some political prisoners were going to be retried in ordinary courts in public trials.

Amnesty International's recommendations to the Peruvian government

In view of all these concerns Amnesty International urges the Peruvian authorities:

- to ensure that all those falsely charged with "terrorism-related" offences are released immediately and unconditionally without further delay, that they have their criminal records deleted and receive an adequate compensation to allow them to restart their lives;

- to actively support the work of the Pardon Commission by providing it with adequate resources and personnel to carry out the revision of all cases presented to it;

- to carry out a proactive policy in all Peruvian prisons to review the cases of prisoners sentenced for "terrorism-related" offences, in order to identify all possible "innocent prisoners" and allow them to present their cases to the Pardon Commission;

- to ensure that all political prisoners receive a fair trial under international fair trial standards;

- to continue to review the anti-terrorism legislation, including the latest decree laws of January and February 2003 so as to ensure that this legislation falls in line with international fair trial standards;

- to comply with the recommendation of the Inter-American Commission on Human rights and close Challapalca and Yanamayo high security prisons immediately.

APPENDIX

Peru: Prisoners of Conscience - Appeal Cases

The cases below are some examples of the total number of cases of "innocent prisoners" identified by local human rights in Peru, which Amnesty International has investigated.

All the cases featured in this report are cases represented by human rights organizations that are members of the *Coordinadora Nacional de Derechos Humanos*, a human rights coordinating body which represents over 60 Peruvian non-governmental organizations.

Amnesty International believes that all the people featured in this report are prisoners of conscience because they have been falsely accused of "terrorism-related" offences and there is no credible evidence that they have or have had any links with the armed opposition Shining Path and the MRTA. None have used or advocated violence.

The organizationAmnesty International is asking for their immediate and unconditional release.

Teodoro Wilfredo Campos Quispe

On 1 June 1995, Teodoro Wilfredo Campos Quispe was detained on suspicion of "terrorism-related" offences by the police while he was at work in the grocery shop where he was employed in Trujillo, La Libertad Department.

There was reportedly no judicial order of detention against Teodoro Campos at the time of the arrest. The police report states that more than ten days after his arrest, on 12 and 13 June 1995, two "repentants" claimed that Teodoro Campos had committed "terrorism-related" offences. The report also states that when Teodoro Campos was detained he was in possession of "subversive" propaganda. However, this was not presented by the prosecutor as evidence in court.

Teodoro Campos has always denied the charges against him. He stated that he had been ill-treated physically and psychologically while under arrest and that he was forced to sign a confession while in police custody. According to reports, neither a lawyer nor a representative of the Public Ministry was present when he was being questioned by the police.

During his trial one of the two "repentants" who accused Teodoro Campos changed her testimony in court stating that she did not know him.

On 30 January 1998, Teodoro Campos was charged with "terrorism-related" offences and sentenced to 20 years' imprisonment by the *Sala Corporativa Penal para Casos de Terrorismo* (High Court for Terrorism-related Offences). The sentence was confirmed by the *Corte Suprema de Justicia* (Supreme Court of Justice) on 11 November 1998.

Teodoro Campos has a son who at the time of his arrest was under the age of 18.

Teodoro Campos' case was presented to the *Ad hoc* Commission for a presidential pardon. However, the Commission did not review his case before its mandate ended in December 1999. The case was then transferred to the National Council for Human Rights, at the Ministry of Justice, for consideration and subsequently to the Pardon Commission established by the government of Valentin Paniagua. None were able to review the case. Currently the case is pending before the Pardon Commission established by Alejandro Toledo. To date the Commission has not yet reviewed the case.

Teodoro Campos is currently serving his sentence in the maximum security prison Penal Miguel Castro Castro, in Lima.

Francisco Valencio Carhuallay Cruz

Francisco Valencio Carhuallay Cruz was detained on 25 August 1999 and charged with the "terrorism-related" offence of "treason".

The police allegedly claimed that Francisco Carhuallay had been accused by a "repentant" of being a member of Shining Path and of having taken part in an attack on 26 March 1995 in Julcán Province, La Libertad Department. According to the information received, the "repentant" who accused Francisco Carhuallay, repented in 1993 at which point he would presumably have had to break all links with the armed opposition. This makes it unlikely that he could have provided information about members of the armed opposition who took part in an attack two years later.

According to Francisco Carhuallay's testimony, in 1994 a group of armed Shining Path members arrived at his hamlet, Nueva Unión, Chir-Chir, La Libertad Department, and threatened the residents and forced them to take part in a meeting. After the meeting they forced the villagers to provide them with food. Francisco Carhuallay admitted in court having given food to members of the armed opposition twice, in 1994 and in 1996 respectively.

During the trial, one of Francisco Carhuallay's co-defendants stated that the accused had given him a firearm. However, according to reliable reports, the weapon had been stolen from Francisco Carhuallay by the co-defendant.

Two years after Francisco Carhuallay was detained the military judge in charge of the trial ruled that the case should be transferred to a civilian court. This decision was appealed by the prosecution. The case has now reportedly been transferred to a higher military court which will decide whether the case is to be tried in a civilian or military court.

In April 2001, the case was presented to the Pardon Commission under Valentín Paniagua, but the Commission did not review this case before the end of its mandate in March 2001. Currently it is before the pardon Commission established by Alejandro Toledo.

Before his arrest Francisco Carhuallay worked as a peasant. He has seven children who at the time of his arrest were all under the age of 18. He had no previous criminal record. He is currently awaiting trial at Picsi Prison, in Chiclayo Department.

Felipe Carrasco Luque

Felipe Carrasco Luque was detained on 28 February 1993 accused of belonging to *Socorro Popular*, a social assistance group within Shining Path. He was charged with the "terrorism–related" offence of "treason" and sentenced by a military court on 4 October 1994 to 30 years' imprisonment.

According to reports, the only evidence against Felipe Carrasco is the testimony of a "repentant" who accused him of lending his house to the armed opposition to carry out meetings and hide documents and weapons.

In 1992, Felipe Carrasco, who worked as a builder prior to his arrest, met a man who approached him asking for a job. Felipe Carrasco reportedly talked to this person on several occasions to discuss issues related to the job. Subsequently the person started talking to him about Shining Path, after which Carrasco refused to meet him again. However, the person insisted and on one occasion he and four other individuals visited Felipe Carrasco at home and threatened him with death if he did not comply with their demands to cooperate with the armed opposition. Felipe Carrasco refused.

Several days after this incident, Felipe Carrasco's children told him that the same five individuals had returned to the house and went inside while he was away. According to the children, this happened on several occasions. Felipe Carrasco, fearful for his life and that of his family did not go to the police to report the incident.

On 28 February 1993, the police raided Felipe Carrasco's house after a "repentant" accused him of lending them his house. The officers, however, did not find anything which could link Felipe Carrasco to the armed opposition until one of his children pointed the officers to the garden. In a bag buried in the garden, the officers found Shining Path propaganda and some weapons. Felipe Carrasco's son stated that the men who entered the house without his father's knowledge had hidden the bag there and that his father was not aware of it.

On 4 October 1994, Felipe Carrasco was sentenced by a military court to 30 years' imprisonment. Felipe Carrasco is currently serving his sentence in the prison Penal Huacariz, in Cajamarca.

Before his arrest, Felipe Carrasco has three children who were under the age of 18 at the time of the arrest.

The case is currently before the Pardon Commission established by Alejandro Toledo.

In addition, following the ruling by the Constitutional Tribunal stating that several articles of the 1992 "anti-terrorism" legislation were unconstitutional, including the trial of civilians in military courts, the local human rights organization representing Felipe Carrasco filed an *Habeas Corpus* writ on his behalf. The court ruled in favour of Felipe Carrasco. He is currently waiting for his trial in the military courtto be annulled and the case to be transferred to a civilian court for a retrial.

Walter Wilmer Cubas Baltasar's family.
© Private.

Walter Wilmer Cubas Baltasar

Walter Wilmer Cubas Baltasar was detained by the police in Lima on 20 January 1993 when he was walking to his mother's house. According to the police, he was detained during a police raid in the street near an area where a group of four men and a woman had painted messages on the wall in support of Shining Path. The police accused Walter Cubas of having been involved in this incident.

When detained by the police, Walter Cubas reportedly had his face covered with a black jacket and was beaten by the officers before being taken in a police van to Mirones police station, in LimaThe police officers reportedly covered Walter Cubas' face with a jacket and beat him before taking him in a police van to Mirones police station, in Lima.

According to Walter Cubas' testimony, at the time of his arrest he was carrying some money, identification documents and a religious book, which he gave to the police officers. However, the police report stated that those same documents were found on 22 January 1993 during a police raid of a building in a different location in Lima where members of the armed opposition were detained.

According to reports, once in the police station, Walter Cubas was threatened and ill-treated by the police who tried to force him to sign a previously prepared statement in which it was stated that the detainee was carrying a firearm and an explosive. A medical report carried out on Walter Cubas confirmed that he showed bruising consistent with ill-treatment. In addition,

it appears that neither a legal representative nor a prosecutor were present when Walter Cubas was questioned by the police 20 days after his arrest.

According to the police report, when Walter Cubas was detained he was carrying a weapon which belonged to a member of the Peruvian Army who was killed in an attack in the El Agustino District on 9 August 1992. However, none of the military officials who were present during this event could identify Walter Cubas and there is no evidence that Walter Cubas was carrying a gun other than the statement of the police officers who carried out the arrest. The weapon and explosives were not tested for fingerprints to determine whether the detainee had handled them.

Walter Cubas was charged with the August 1992 attack in El Agustino District in which an army officer was killed as well as with painting subversive slogans in Lima streets on 20 January 1993.

During the trial, Walter Cubas' co-defendants, who were allegedly members of Shining Path, denied that he had taken part in the painting of propaganda slogans in support of Shining Path and stated that they had been forced through torture and ill-treatment to accuse him of being part of the armed opposition. A medical report confirmed that the co-defendants showed injuries consistent with beatings.

In addition, one of the co-defendants who confessed to having painted the slogans stated that the graffiti was painted the day before Walter Cubas was detained and denied knowing Walter Cubas. According to reports no paint was found on Walter Cubas' hands at the time of the arrest.

Walter Cubas was tried by a military tribunal and sentenced to life imprisonment for the "terrorism-related" crime of "treason".

Before his arrest, Walter Cubas worked in a textile factory where he was a union leader. In addition, together with his wife and mother, he also worked in the family business, a fish stall. Before his arrest on 20 January 1993 he had no criminal record. He is currently serving his sentence in the maximum security prison Penal Miguel Castro Castro, in Lima.

In 2002, his case was presented to the Pardon Commission established by Alejandro Toledo.

Marcos Fernando Espinoza Ayhua

On 31 October 1993, Marcos Fernando Espinoza Ayhua was detained by the police in a polling station in La Victoria district of Lima. He was accused of being a Shining Path member and of having taken part in several attacks in Villa El Salvador District also in the capital, in December 1991.

The only evidence against him appears to be a document containing his full name next to the alias "comrade Martín". According to the police, a person using this alias had taken part in several attacks in the area, including an attack on a local radio station, Radio Imperial de Villa San Salvador, and an attack on a lorry belonging to a trans-national soft drinks company. However, there is no evidence that Marcos Espinoza took part in the above attacks.

The piece of paper presented as evidence in court was found by the police in December 1991 during a raid carried out in the house of a woman who was later convicted of "terrorism-related" offences. However, those detained during the raid have always denied knowing Marcos Espinoza. Moreover, when the police searched the house of Marcos Espinoza they did not find anything to incriminate him. Marcos Espinoza has always claimed his innocence, stating in his testimony that he had lost his identification documents and had obtained duplicates, which raised the possibility that the originals had been stolen and used by the armed opposition.

Marcos Espinoza was charged with "terrorism-related" offences and convicted to 10 years' imprisonment. He will have served his sentence by 31 October 2003.

According to the latest information received by Amnesty International in November 2002, Marcos Espinoza is currently suffering from facial paralysis. He is serving his sentence in the maximum security prison Penal Miguel Castro Castro, in Lima.

His case was recommended for presidential pardon in December 2001 by the Pardon Commission established by Alejandro Toledo. However, according to reports, his release has been delayed due to documents having been misplaced by the Commission following their recommendation.

Elmer Salvador Gutiérrez Vásquez

Elmer Gutiérrez Vásquez in Miguel Castro Castro Prison. © Private.

Elmer Gutiérrez Vásquez's family. © Private.

On 17 February 1995, Elmer Salvador Gutiérrez Vásquez was detained by the police and charged with being a member of Shining Path and having taken part in several attacks before 1992. According to reports, the only evidence against him was the testimony given to the police by his co-defendants who benefited from the Repentance Law.

According to reports, while under police custody, Elmer Gutiérrez was tortured and ill-treated by police officers from the "anti-terrorism" branch of the police, *Dirección Nacional contra el Terrorismo*, DINCOTE (National Directorate against Terrorism), and forced to sign statements incriminating himself and others in "terrorism-related" crimes.

His case was first heard by a military court for the "terrorism-related" crime of "treason", but was then transferred to a civilian court because at the time when the attacks had allegedly taken place the crime of "treason", tried in military courts, had not been defined as a crime under Peruvian legislation. The prosecutor appealed against the decision to transfer his case to a civilian court. His appeal was upheld and Elmer Gutierrez's case was transferred back to a military court. The rest of his co-defendants were tried under the jurisdiction of a civilian court and acquitted in 1996, including the person who had previously confessed to having recruited Elmer Gutiérrez into the armed opposition group.

Elmer Gutiérrez was sentenced to life imprisonment on 3 March 1997. During the trial at least two of the witnesses who had accused Elmer Gutiérrez of "terrorism-related" offences reportedly stated that they did not know him and that their testimonies before the police authorities had been obtained through torture and ill-treatment, including death threats.

His case was presented to the Pardon Commission established by President Alberto Fujimori, but this Commission did not review his case. The case is currently before the Pardon Commission established by President Alejandro Toledo.
In 2001, Elmer Gutierrez's lawyer filed an appeal before the Consejo *Supremo de Justicia Militar* (Supreme Council of Military Justice) to annul his conviction in a military court. The case has not yet been heard.

Before to his arrest, Elmer Gutiérrez was a physical education school teacher and a local representative of the teachers' union. He is married and has two daughters, one of whom is

under the age of 18. He is currently serving his sentence in the high security prison Penal Miguel Castro Castro, in Lima.

Benjamín Masgo Dueñas

On 22 June 1995, Benjamín Masgo Dueñas was detained on suspicion of "terrorism-related" offences.

According to reports, Benjamin Masgo was tortured and ill-treated while he was being taken blindfolded to the "anti-terrorism" branch of the police, DINCOTE, as well as in the interrogation room, in an attempt to force him to confess to "terrorism-related" offences and to provide names of other alleged collaborators of the armed opposition. He was allegedly not allowed to have a lawyer present while he was being questioned. Apparently, one of the officers asked him for money before he could have access to a lawyer.

According to the information received, the only evidence against Benjamín Masgo is the testimony of two people linked with the armed opposition and a "repentant". The two convicted Shining Path members accused Benjamín Masgo of being part of *Socorro Popular* (Popular Aid), a social assistance group aiding members of Shining Path, and of having offered the school he had established together with his wife to the armed opposition to be used as a place for meetings and indoctrination. However, during the trial Benjamín Masgo's accusers stated that they had never met Benjamín Masgo and that they had only testified against him after having been subjected to torture and ill-treatment by officers of the "anti-terrorism" branch of the police.

The third person accused Benjamín Masgo of taking part in several attacks but was not able to state when and where these events had taken place. The person did not testify in court to confirm these allegations.

During the trial there was no other evidence introduced against Benjamín Masgo. He was sentenced to 30 years' imprisonment and is currently serving his sentence in the high security prison Miguel Castro Castro in Lima.

His case was presented to the *Ad hoc* Commission established by President Fujimori, but the Commission did not review it before the end of its mandate in December 1999. In December 2001, his case was presented to the Pardon Commission established by Alejandro Toledo.

As mentioned, prior to his arrest, Benjamín Masgo was an English teacher and had established a primary and secondary school together with his wife who worked as the school's director. He was also the owner of a shop which sold neon publicity signs, where he spent most of his time. He has a daughter who was eight months old when Benjamín Masgo was detained.

Carlos Gregorio Ortega López

In November 1996, Carlos Gregorio Ortega López was detained. At the time he was an engineer working at the University La Cantuta, in Lima. He was charged with being a member of Shining Path and of having used his engineering business to collect money for the armed opposition.

According to reports, Carlos Ortega had been previously been detained in May 1993 and charged with the same offences. Seven months later he was acquitted and released. However, in 1995 the *Corte Suprema de Justicia* (Supreme Court of Justice) ruled to annul his acquittal and ordered his re-detention.

After his release in 1993 and until he was re-detained in 1996, Carlos Ortega worked as an adviser for members of parliament from *Cambio 90*, the party of former President Alberto Fujimori. He had been a member of *Cambio 90* since 1990.

During his second trial the prosecution argued that his curriculum vitae had been found in the house where the leader of Shining Path, Abimael Guzmán had been arrested in 1992. His defence argued that the curriculum vitae was clear evidence that Shining Path had Carlos Ortega under surveillance and wanted him to collaborate in their activities. In fact, Carlos Ortega had in the past filed a complaint in which he reported having suffered acts of intimidation from Shining Path members while working at La Cantuta University.

On 14 May 1998, Carlos Ortega was sentenced to 25 years' imprisonment for "terrorism-related" offences.

His case was presented to the *Ad hoc* Commission in January 1997. The Commission did not review the case before its mandate ended and transferred it to the National Council for Human Rights within the Ministry of Justice as a priority case.[16] The case was then transferred to the Pardon Commission established by Valentín Paniagua, but this Commission did not have time to review the case. Carlos Ortega's case is now before the Pardon Commission established by Alejandro Toledo.

Carlos Ortega is married and has a daughter who was 16 years old at the time of his arrest. He is currently serving his sentence in the high security prison Miguel Castro Castro in Lima.

Iván Ruiz García

On 18 July 1996, Iván Ruiz García was detained on suspicion of having taken part in the killing of four civilians in Nuevo Horizonte, Pucallpa, Ucayali Department, an attack allegedly performed by the armed opposition.

[16]Defensoría del Pueblo, *La labor de la Comisión Ad-hoc a favor de los inocentes en prisión,* p. 183

Before his arrest Iván Ruiz worked as a lorry driver in San Alejandro, Padre Abad Province, Pucallpa, Ucayali Department, on a road building project in the locality. In 1996 Shining Path had a strong presence in the hamlets of the area where the road was being built and they often threatened drivers to force them to transport Shining Path supporters. In order to preserve the physical integrity of those doing road works the Mayor of San Alejandro advised workers and drivers not to offer any resistance to Shining Path demands if stopped on the road.

On 20 December 1989, Iván Ruiz was driving from Pucallpa to San Alejandro when he was stopped by a group of ten people who identified themselves as Shining Path members and demanded that he take them to the hamlet of Nuevo Horizonte. They threatened him and, fearing for his life, he took them there unaware that a "popular trial" was going to take place in the hamlet. The trial was against four people accused by Shining Path of being MRTA members. The four individuals were shot dead in front of the villagers and Iván Ruiz.

Seven years after the events, Iván Ruiz was accused by the wife and sister of two of the men killed of having taken part in the assassination. She stated that Iván Ruiz had given the order to kill the four men.[17] However, her testimony was changed on several occasions. Apparently in her first statement to the police she denied knowing any Shining Path members. Later on she accused some of the inhabitants of Nuevo Horizonte of having taken part in the killings, but denied knowing Iván Ruiz. However, in her third statement she stated that it was Iván Ruiz who gave the order to kill the four men.

In addition, another witness identified Iván Ruiz as the person who transported the armed opposition members to Nuevo Horizonte.

A "repentant" apparently also accused Iván Ruiz of being a Shining Path leader in the hamlet of San Juan from 1986 to 1988 and of having taken part in several armed opposition attacks at the time. However, Iván Ruiz was working in San Alejandro during those years.

Iván Ruiz has always denied his involvement in the killings which took place in December 1989. He has said he was threatened with death and forcibly made to take Shining Path members to Nuevo Horizonte where four people accused of being MRTA members were slaughtered in front of the hamlet's population.

On 13 July 1997, Iván Ruiz was sentenced by a civilian court to 15 years' imprisonment for "terrorism-related" offences. He is currently serving his sentence in Pucallpa prison, in Ucayali.

His case was presented to the *Ad hoc* Commission under Alberto Fujimori but the Commission did not review the case before its mandate ended. The case was transferred to the National Council for Human Rights within the Ministry of Justice as a priority case.[18] Currently the case is pending before the Pardon Commission established by Alejandro Toledo.

[17] See on page 7 the case of Justo Dagoberto Alvarado Alva who was also accused of the same crime by this witness.
[18] Defensoría del Pueblo, *La labor de la Comisión Ad-hoc a favor de los inocente en prisión*, p. 185

Lucio Vilca Galindo's family.
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Lucio Vilca Galindo

On 9 April 1995, Lucio Vilca Galindo was detained by the police when he was at a polling station in Lima during the presidential elections. According to the police there were two arrest orders against him for the "terrorism-related" offence of "treason".

The only evidence against Lucio Vilca seems to be the testimony of a "repentant" that, according to the police, had identified him as a Shining Path leader. In addition, the "repentant" accused Lucio Vilca of having taken part in several attacks in 1993. However, the "repentant" did not testify in court.

The police report states that during the police raid on his house no evidence was found to suggest that he had links with armed opposition.

After his arrest, Lucio Vilca was taken to the "anti-terrorism" branch of the police, DINCOTE, in Lima. According to information received by Amnesty International, Lucio Vilca was held incommunicado for 18 days. While in police custody he was tortured, beaten on the face and eyes and burnt with cigarettes, for at least three days. According to his testimony he was also put in a dark room for at least 24 hours. Throughout the interrogation phase the police showed Lucio Vilca pictures of unknown individuals and demanded that he identify them as members of the armed opposition in exchange for a shorter sentence. Lucio Vilca denied knowing any of them.

Lucio Vilca's lawyer filed a *habeas corpus* writ on his behalf and he was taken before a judge 18 days after detention. The investigating judge charged him with the "terrorism-related" crime of "treason" and the case was transferred to a military court.

On 19 May 1994, Lucio Vilca was taken to Las Palmas, a military detention centre in Surco, Lima, without the knowledge of his family and lawyer. He was placed in a cell for another 15 days and was not given access to his lawyer or allowed family visits. He was only allowed contact with a lawyer appointed by the military who tried to press Lucio Vilca to admit he was guilty although he had always stated his innocence.

The military court in charge of the case dismissed the charges of "treason" and transferred the case to a civilian court.

After the case had been transferred to a civilian court, the "repentant" who had accused Lucio Vilca changed his testimony and stated that he did not know him. However, while in prison

awaiting his trial in a civilian court, Lucio Vilca was told that a second "repentant" had accused him of being a Shining Path leader and having taken part in the same "terrorism-related" offences he had just been acquitted of by the military court.

On the basis of these allegations a second trial was opened against Lucio Vilca under military jurisdiction. This time the military court sentenced him to 30 years' imprisonment. In 1997 his sentence was changed to life imprisonment by the Supreme Council of Military Justice. Lucio Vilca was apparently not informed of the increase to his sentence until 2000.

In 2002, Lucio Vilca's case was presented to the Pardon Commission established by Alejandro Toledo.

Following the ruling by the Constitutional Tribunal stating that several articles of the 1992 "anti-terrorism" legislation were unconstitutional, including the trial of civilians in military courts, the local human rights organization representing Lucio Vilca filed an *habeas corpus* writ on his behalf. The court ruled in favour of Lucio Vilca and his trial in the military jurisdiction was annulled. The case has now been transferred to a civilian court and Lucio Vilca is awaiting a retrial.

Before his arrest, Lucio Vilca worked as a shoemaker and lived in the shanty town of Canto Grande, Lima. He is married and has four children who were all under the age of 18 at the time of his arrest.

Apolinario Vilcapuma Huamán

On 4 June 1991, Apolinario Vilcapuma Huamán was detained and charged with having taken part in an assault and robbery against three inhabitants of Yauyos, Lima Department, in March 1991, to obtain clothes, food and medicines for Shining Path.

When questioned by the police, Apolinario Vilcapuma admitted to having been present when the assault took place. However, he stated that he had been forced to witness the attack.

According to reports, Apolinario Vilcapuma had been harassed and threatened by the armed opposition prior to his arrest. In 1989, when he was 17 years old, he had been kidnapped by Shining Path and held captive for nine days before he escaped. Shining Path members had later approached him in his home in Yauyos and threatened him and his wife with death if he did not cooperate. Fearing for his life, Apolinario Vilcapuma and his wife left their home and moved to Cañete, in Lima Department.

In March 1991, Apolinario Vilcapuma returned to Yauyos to visit his family. During that visit he was again kidnapped by Shining Path and forced to witness the assault and robbery for which he was charged. None of the victims of the attack identified him as one of the assailants.

According to reports, during a raid on the house of Apolinario Vilcapuma's uncle, where he and his wife were living during their 1991 visit to Yauyos, the police found a pistol. According to Apolinario Vilcapuma's testimony, the gun belonged to his uncle. However, the police concluded that the weapon belonged to the detainee and that it had been used to commit the attacks of which he was being accused. However, the police report allegedly does not provide any evidence that Apolinario Vilcapuma used the gun, and the police apparently did not question Apolinario Vilcapuma's uncle to establish ownership of the gun.

On 8 August 1994, Apolinario Vilcapuma was sentenced to 20 years' imprisonment by a civilian court in Callao, Lima. The sentence was upheld by the Supreme Court of Justice on 26 June 1995.

On 26 October 2001, his case was presented to the Pardon Commission established by President Alejandro Toledo.

Apolinario Vilcapuma is currently serving his sentence in the high security prison Penal Miguel Castro Castro, in Lima.

Prior to his arrest, Apolinario Vilcapuma worked in a hardware store in Cañete, Lima Department. He is married and has a nine-year-old daughter.

Carlos Alberto Jorge Garay

On 23 July 1992, Carlos Alberto Jorge Garay was detained by the police in a street in Lima on suspicion of having taken part in a bomb attack which had taken place nearby.

While under arrest at the "anti-terrorism" branch of the police, DINCOTE, Carlos Jorge was allegedly tortured and ill-treated and forced to sign a statement confessing to his involvement in the attack.

On 28 February 1996, Carlos Jorge was tried and sentenced to 30 years' imprisonment by a civil court. According to reports the only evidence against him was the confession he had signed under torture. Apparently at the moment of his arrest, he was not carrying a weapon and there was no evidence that he had used one. No forensic tests were done by the police to confirm whether the detainee had used explosives before his arrest.

On 11 December 1997 the Supreme Court of Justice annulled the sentence he had been given. Carlos Jorge was retried. During the second trial, the only witness who had testified against him in his first trial changed his statement and denied that Carlos Jorge had been involved. In addition, the public prosecutor in charge of the case concluded that the involvement of Carlos Jorge in the bomb attack of 23 July 1992 had not been proven. However, Carlos Jorge was sentenced to 25 years' imprisonment on 3 May 1999. Two months later, on 9 July 1999, the Supreme Court ratified the sentence.

On 29 May 2002, the case was presented to the Pardon Commission established by President Alejandro Toledo. He is serving his sentence in the maximum security prison Miguel Castro Castro, in Lima.

WHAT CAN YOU DO

Please write urging the Peruvian authorities:

- to release immediately and unconditionally all the above prisoners of conscience (see list enclosed).
- to ensure that all those unfairly imprisoned for "terrorism-related" offences who are pardoned and released have their criminal records deleted and receive an adequate compensation to allow them to restart their lives.
- to actively support the work of the Pardon Commission by providing it with adequate resources and personnel to carry out the revision of all cases presented to it.
- to carry out a proactive policy in all Peruvian prisons to review the cases of prisoners sentenced for "terrorism-related" offences, in order to identify all possible "innocent prisoners" and allow them to present their cases to the Pardon Commission.

SEND YOUR APPEALS TO:

President of the Republic
Presidente Alejandro Toledo Manrique
Presidente de la República del Perú
Palacio de Gobierno
Plaza Mayor
Lima 1
PERÚ
Fax: + 51 1 426 6770

Minister of Justice
Dr. Fausto Alvarado Dodero
Ministro de Justicia
Ministerio de Justicia
Scipión Llona 350
Miraflores
Lima 18
PERÚ
Fax: + 51 1 422 3577

PRISONERS OF CONSCIENCE ADOPTED BY AMNESTY INTERNATIONAL WHO REMAIN IN PRISON BY MAY 2003

PRISONER'S NAME	DATE OF DETENTION	PRISON
ALVARADO ALVA, Justo Dagoberto	Jul. 1996	Penal de Sentenciados de Pucallpa, Ucayali
CAMPOS QUISPE, Teodoro Wilfredo	Jun. 1995	Penal Miguel Castro Castro, Lima.
CARHUALLAY CRUZ, Francisco Valencio	Aug. 1999	Penal de Sentenciados de Pisci, Chiclayo
CARRASCO LUQUE, Felipe	Feb. 1993	Penal de Huacariz, Cajamarca
CUBAS BALTAZAR, Walter	Feb. 1993	Penal Miguel Castro Castro, Lima.
ESPINOZA AYHUA, Marcos Fernando	Oct. 1993	Penal Miguel Castro Castro, Lima.
GUTIÉRREZ VÁSQUEZ, Elmer Salvador	Feb. 1995	Penal Miguel Castro Castro, Lima.
HILARIO QUISPE, Gregorio	Jul. 1995	Penal de Huamancaca, Huancayo
HUAMANÍ DIAZ, Jaime	Nov. 1992	Penal de Máxima Seguridad de "Yanamayo"- Puno
JORGE GARAY, Carlos Alberto	Jul. 1992	Penal Miguel Castro Castro
MASGO DUEÑAS, Benjamín	Jun. 1995	Penal Miguel Castro Castro, Lima.
PALMA SUÁREZ Victor Paul	Jan. 1995	Penal Miguel Castro Castro, Lima
PALOMINO SOTO Herminio	Feb. 1993	Penal Miguel Castro Castro, Lima
ORTEGA LÓPEZ, Carlos	Nov. 1996	Penal Miguel Castro Castro, Lima.
OSNAYO TUNQUE, Zenón Cirilo	Aug. 1992	Penal Huamancaca- Huancayo

RODRÍGUEZ SUÁREZ, Julia	Apr. 1994	Penal de Mujeres de Chorillos, Lima
RUIZ GARCÍA, Iván	Jul. 1996	Penal de Pucallpa, Ucayali
VILCA GALINDO, Lucio	Apr. 1995	Penal Miguel Castro Castro, Lima.
VILCAPUMA HUAMÁN, Apolinario	Jun. 1991	Penal Miguel Castro Castro, Lima.