

AMNESTY INTERNATIONAL

Peru: Prisoners of Conscience

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“The control mechanisms established by the [...] anti-terrorism law do not work well. The filters are calibrated to catch both camel and mosquito. Crimes are so ill-defined that anyone could be accused of anything by anybody, and be convicted by them.”

“The President ... assured [us] that cases that revealed ‘compelling evidence of innocence’ would be reviewed. Let’s not be mean about it; this is encouraging.”

Hubert Lanssiers ¹, *Los Dientes del Dragón*, December 1995

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INTRODUCTION

“... there have been trials and convictions [for crimes of terrorism] on the basis of uncorroborated or frankly fraudulent information...”

- Ministry of Justice, July 1995

Name: Hermes Rivera Guerrero, Amnesty International prisoner of conscience, married with a son. He was detained in May 1992 and unjustly sentenced to 20 years' imprisonment.

Since 1992 Amnesty International has documented over 900 cases of Peruvians who claim that they are innocent and have been unjustly accused of terrorism.¹ Of this number Amnesty International has adopted 122 as “prisoners of conscience” - persons deprived of their freedom for political reasons, who have not used or advocated violence, and who have been charged with acts that falsely link them with the armed opposition. However, this figure represents only a small fraction of the probable total of Peru's prisoners of conscience.

¹The present report is based on information received by the organization since 18 April 1996.

In its annual report on the human rights situation in Peru, published at the beginning of 1996, the National Coordinating Committee for Human Rights (CNDDHH) states that between May 1992 and December 1995 “the groups linked to the CNDDHH have taken on 1,390 cases of people unjustly implicated in crimes of terrorism and treason. Of these, 760 are free, after having spent a distressing time in prison, and have received no compensation whatsoever for the unjust treatment meted out to them by the State. Until December 1995, 607 persons remained in detention and 23 were missing.”

This systematic pattern of arbitrary detention arises from a background of violent and widespread human rights abuses committed during the last 16 years by the Communist Party of Peru (Shining Path) and the Túpac Amaru Revolutionary Movement (MRTA), the two armed opposition groups which have been active in Peru since 1980 and 1984 respectively.

Amnesty International has received thousands of reports of abuses attributed to Shining Path since the group carried out its first act of violence: cases of torture; deliberate and arbitrary murder of civilians; murders of members of the security forces who are *hors de combat*. Of those killed by Shining Path, thousands were defenceless civilians, in no way involved with the internal conflict. Shining Path continues to torture its prisoners regularly, sometimes after submitting them to mock trials in front of forcibly assembled villagers. The group has also carried out the selective assassination of civilian officials and army officers and has killed captive or wounded members of the police and security forces, or those who had surrendered. Since 1984, the year in which the MRTA took to arms, similar abuses have been attributed to this group, although to a lesser degree.

When President Alberto Fujimori came to power for the first time in July

1990, the influence both of Shining Path and the MRTA had spread from the interior of the country as far as metropolitan Lima. Between 1990 and 1992, both groups had carried out major armed actions in Lima, throwing doubt on the Peruvian State's ability to survive.

Consequently, in April 1992, President Fujimori announced that the country would be run by an emergency government headed by the Executive. Constitutional government was suspended and the Peruvian Congress closed down, as was most of the judicial system. Between May and November 1992, President Fujimori and his Council of Ministers, who had governed the country by decree law until December of that year, issued a number of anti-terrorism decrees in response to the wide and growing tide of violence by the armed opposition. The President maintained that these decrees would solve some of the main problems encountered by the authorities in their counter-insurgency struggle, such as the apparent incapacity of the judicial system to secure the conviction of suspected members of armed groups and the mildness - in the government's view - of the few sentences that were meted out.

Amnesty International recognizes the right of the State to combat armed opposition groups. However, it believes that 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]"ⁱⁱⁱ.

Amnesty International has repeatedly expressed concern at the effects on human rights of the anti-terrorism laws

passed between May and November 1992, on the grounds that these fall short of international fair trial standards and facilitates the imprisonment of "prisoners of conscience"^{iv}.

Amnesty International recognizes that on a number of occasions President Fujimori, as well as other Peruvian authorities, have shown a concern for and wish to release, those prisoners unjustly accused of crimes of terrorism - known in Peru as "innocent prisoners"^v - and to bring the anti-terrorism legislation into line with procedures established by international human rights norms. Some prisoners unjustly charged with crimes of terrorism have been released, and at various times the Peruvian Congress has approved positive amendments to the law.

Nevertheless, Amnesty International believes that the anti-terrorism laws continue to fail to match international fair trial standards and the number of reports which the organization has received on prisoners unjustly accused of crimes of terrorism continues to be very high.

It should not be forgotten that behind the figures are "people of flesh and blood, with names and surnames, with personal histories, with parents, siblings, children and friends, people who are living a nightmare and who cherish the hope of recovering their freedom."^{vi}

CHAPTER 1

THE ANTI-TERRORISM LAWS AND PRISONERS OF CONSCIENCE

"I want, first of all, to thank [members of Amnesty International] with all my heart, on my own behalf and on my younger daughter's, for all the solidarity they have shown over my unjust imprisonment. This preserved my personal integrity and ensured the promptness of the hearing, at which they

decided to acquit me again, and that is the reason I'm now free."

- Magna de la Cruz Vásquez, 15 April 1996

The case of Magna de la Cruz, a prisoner of conscience incarcerated from 1993 to 1994 and again at the beginning of 1996, is just one of the hundreds of cases of prisoners of conscience unjustly accused of crimes of terrorism which Amnesty International has documented since May 1992, when the present anti-terrorism laws came into force.

Amnesty International believes that this legislation facilitates the imprisonment of persons who have been groundlessly accused of terrorism-related crimes, in the absence of any reliable evidence which would link them to the armed opposition, and without them having used or advocated violence.

The organization also believes that the anti-terrorism laws deny the right to a fair trial of all those detained and put on trial for terrorism-related crimes. The fact that those charged with the crime of treason - one of the crimes of terrorism under the legislation - must be transferred to a military jurisdiction; the fact that the police and military personnel involved in the detention and questioning of the accused are prohibited from testifying in court; and the fact that the trial hearings are not held in public, are among the features of these laws which undermine international fair trial standards ^{vii} - including those enshrined in the *International Covenant on Civil and Political Rights*, the *American Convention on Human Rights* ^{viii}, as well as the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment* and the *Basic Principles on the Independence of the Judiciary*.

Already in November 1993, in his report on a mission to Peru in May and June 1993, the UN's Special Rapporteur on extrajudicial, summary or arbitrary

executions mentioned that the anti-terrorism laws had "seriously restricted internationally recognized standards on the right to a fair trial and, in particular, the right to an adequate defence."^{ix}

A year later, in November 1994, the Committee against Torture, set up in conformity with the *UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, also expressed concern about Peru's anti-terrorism legislation when it examined Peru's periodic report on the measures the Government had taken to adhere to the Convention - which the country had ratified in July 1988. The Committee came to the conclusion that, in terrorism-related cases, the practice of torture was widespread during the interrogation stage and that its perpetrators enjoyed impunity. The Committee was likewise of the view that the anti-terrorism legislation continued to fall sort of international norms on the impartiality of trials, and expressed concern about the fact that civilians were tried under military jurisdiction.

Apart from the shortcomings in pre-trial and trial procedures, three further features of the anti-terrorism laws encourage the imprisonment of persons as "prisoners of conscience".

The first is the vague and all-embracing description of acts defined as "crimes of terrorism" in Article 2 of Decree Law _ 25.475. This was the first of the anti-terrorism decrees. Taking effect on 6 May 1992, it contains the basic judicial definition of "crimes of terrorism" that is now in use in Peru. A number of its articles use such imprecise expressions as "by whatever means" when referring to the carrying out of terrorism.

The second feature of concern relates to the Repentance Law, in force between May 1992 and November 1994.

NAME: Lorenzo Enrique Company Aguirre,
 Amnesty International prisoner of conscience.
 He was arrested in August 1993 and unjustly
 sentenced to 20 years' imprisonment.

Daniel Espichán Tumay, stated that information supplied by "repentants" should be checked with a fine toothcomb because some of it was false and had led to the detention of innocent people. In March 1996, an Amnesty International delegation was received by Daniel Espichán Tumay, at present congressman and vice president of Congress' Human Rights and Pacification Commission, who again confirmed to the organization that the Repentance Law had led to the unjust detention of people who were not linked with the armed opposition.

The third feature facilitating the imprisonment of "prisoners of conscience" relates to the Government's political need to show the effectiveness of their anti-terrorism laws and policy in combatting the armed opposition. To this end, the authorities parade persons detained on suspicion of crimes of "treason" in front of the television cameras or encourage the press to publish their photographs showing them dressed in the traditional stripes of a convict uniform.^x Another technique is to make public comparisons between the relatively small number of convictions for crimes of terrorism between 1980-1992 and the high number of detentions and convictions which followed the introduction of the present anti-terrorism laws. Amnesty International believes that this zeal in demonstrating the success of the new counter-insurgency strategy has led the authorities to strive after convictions, to the detriment of fundamental human rights.

This law defined "repentants" as members of the armed opposition who showed contrition by supplying information leading to the capture of other alleged members of these groups. Among other benefits, the law granted "repentants" immunity from prosecution. Although the Repentance Law Regulations clearly indicated that the police "[had] the responsibility of verifying the information supplied by the applicant", most of the people unjustly held for crimes of terrorism, whose cases have been documented by Amnesty International, were accused, charged and convicted solely on the basis of uncorroborated accusations by members of the armed opposition seeking to benefit from the provisions of the Repentance Law, and who often informed the police about individuals who were not involved with the armed opposition.

Amnesty International acknowledges that efforts have been made to rectify this situation and, as mentioned above, Congress has approved legislative amendments to this effect. For instance, on 28 March 1996,

In March 1994, the then Special Prosecutor for terrorism-related crimes,

NAME: Juan Maella Tomallia, former Amnesty International prisoner of conscience, unjustly imprisoned for 9 months with the photograph of him that was published

Congress passed a draft law presented by the Justice Commission in December 1995, which added the following clause to Decree Law _ 25.475: “in cases where the Supreme Court declares the verdict acquitting the defendant to be null and void, a summons may be issued [to the defendant] to attend the new trial.” [translation by Amnesty International]. This change allows the defendant to remain free until the date of the new trial, instead of being immediately returned to prison.

Until this amendment was made to the anti-terrorism laws, Amnesty International had expressed its concern that the Supreme Court of Justice could quash acquittal verdicts and order the opening of new trial hearings for many of the prisoners who had already been released, and who then faced new detention orders. After spending three years in prison for crimes they had not committed, these prisoners once again had to suffer the loss of their freedom. As the Human Rights National Coordinating Committee explained in its communiqué of 5 October 1995: “The human rights organizations alone know of around 300 cases of this nature, where innocent people who have regained their freedom after months and years of imprisonment are again threatened with the hell that is imprisonment.”

Amnesty International believes that the adoption of the amendment allowing for the issuing of summonses rather than new detention orders in cases where prisoners have already been acquitted, is a positive development. However, there are former prisoners of conscience who, before this recent change in the law, were re-arrested following their release and who are now in prison awaiting re-trial. Others have been re-tried and convicted. One example is the prisoner of conscience Plácido Damián Ccasani who, after having been acquitted and released in February 1992, was again detained in August 1995 and sentenced to 12 years’ imprisonment.

In May 1994, the Secretary General of Amnesty International had discussions in Peru with Carlos Blanco Oropesa and Jaime Yoshimaya Tanaka, the then presidents, respectively, of Congress’ Human Rights and Pacification Commission and of the Peruvian Congress. Jaime Yoshimaya Tanaka told the Amnesty International delegation that Congress planned to introduce new amendments to the anti-terrorism laws, including the creation of a Commission of Notable Jurists, which would review the cases of prisoners falsely accused of terrorism-related crimes. The President of Congress also told the organization that the new Constitution was considering the possibility of the President using Article 118 (21) ^{xi} of the Constitution to grant pardons to such prisoners after all legal avenues for reviewing their cases had been exhausted.

On 20 February 1995, almost a year after the Secretary General of Amnesty International visited Peru, and in the absence of any evidence that

NAME: Juan Antonio Sánchez Gutiérrez, Amnesty International prisoner of conscience. He was arrested in April 1992 and unjustly sentenced to a 30-year prison term. The Supreme Court of Justice annulled the sentence but he remains in prison awaiting a re-trial.

mechanisms had been established to review cases of prisoners who had been falsely accused of terrorism-related crimes - or indeed, that the President had availed himself of powers granted him to pardon those prisoners - Amnesty International wrote to Jaime Yoshimaya Tanaka and Carlos Blanco Oropeza. The organization requested information on the means so far taken by the Congressional bodies to review these cases. The organization received no reply to its letters.

On 20 February 1995, Amnesty International also wrote to Peru's Minister of Justice, Fernando Vega Santa Gadea, with regard to the *Note verbale* presented by the Permanent Mission of Peru to the UN Office in Geneva on 12 August 1994, during the 46th Session of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities. In that part of the statement which mentions that the Peruvian authorities would investigate allegations about the arbitrary detention of prisoners charged with terrorism-related crimes, the *Note verbale* states:

“The Peruvian State cannot neglect its obligation to carry out an investigation into all persons suspected of participation in terrorist activities. Likewise, Peru confirms that if the relevant legal proceedings do not prove the guilt of those accused, they will be freed.

“In this connection, attention should be drawn to the recent approval by the Democratic Constituent Congress of a law submitted by the Executive on the creation of a Commission responsible for considering and assessing the cases of citizens allegedly detained unjustly in accordance with the law currently in force. This Commission will be composed of officials from both the Executive and the Legislative, thereby underlining the unequivocal political will to deal with situations alleged to be unjust, without interfering with the Judiciary, in pursuit of the common objective of respect and guarantees for the human rights of the population as a whole.”^{xii}

In its letter to the Minister of Justice, Amnesty International requested a copy of the law referred to in the *Note verbale* and asked whether the Commission proposed by this law had already been established since, at the time of writing, Amnesty International had no information as to whether a law or review body of this kind has been approved or set up.^{xiii}

The organization has not received a reply from the Minister of Justice.

Legal initiatives aimed at solving the problem

Amnesty International knows of seven draft laws presented to the Peruvian Congress in 1994 and 1995 which have not been debated by Congress. These draft laws seek to remedy the situation of prisoners unjustly accused of crimes of terrorism.

The first of these draft laws was presented in November 1994 by Carlos Torres y Torres Lara, a congressman sitting on the government benches. Among the points on which his proposal is based, the congressman's draft states that "experience shows that there have been cases of possibly innocent people who, at the end of the day, have been convicted as a consequence of uncorroborated evidence or false accusations made by the terrorists themselves." Furthermore, he stated "that this situation has been of concern to the State, which is obliged to act effectively in the struggle against terrorism, providing justice for those innocent people." The draft law proposed the creation of a "Special Consultative Commission for the Review of Cases of Terrorism and Treason [...]"

Eight months later, in July 1995, the Ministry of Justice also presented a draft law to Congress. This proposed the creation of a Special Commission charged with "assessing and proposing to Congress [...] the granting of an amnesty to people facing trial or convicted of crimes of treason or terrorism on the basis of uncorroborated information provided by those availing themselves of the Repentance Law." The grounds for the draft law were that there had been "trials and convictions based on uncorroborated or frankly fraudulent information, provided [by members of Shining Path or the MRTA] with the malicious intention of benefitting from the [Repentance] Law, and then rejoining the armed opposition." [translation by Amnesty International]

The draft laws presented by: congressman Jorge Avendaño on 16 October 1995; by congressmen Javier Díaz Canseco, Gustavo Mohme Lloná, Ernesto Gamarra Olivares, Rolando Breña Pantoja, Alejandro Santa María Silva, Manuel Layo Lazo, Víctor Daniel Coral Pérez and Roger Cáceres Velázquez on 20 October 1995 (all members of opposition parties); and by the vice-president of the Justice Commission,

Oscar Medelius Rodríguez, on 5 December 1995, also expressed concern at the effects of the Repentance Law on prisoners unjustly accused, charged and convicted of terrorism-related crimes. These draft laws also proposed the establishment of a Special Commission that would assess applications for review of convictions for crimes of terrorism.

Furthermore, the draft law presented on 23 October 1995 by Congress members Antero Flores-Araoz, Lourdes Flores Nano and Xavier Barrón Cebrenros also from opposition parties, proposed the addition of an article to Decree Law 25.475 which reads as follows: "An appeal for review by the Supreme Court of Justice of crimes carrying the sentences provided by Decree Laws 25.475 and 25.659^{xiv} [...] takes place where a verdict of guilty has been arrived at on the basis of evidence which has not taken into account evidence that points decisively in favour of an acquittal," and where "the sentence is based on the declaration of a repentant terrorist, without that declaration having been corroborated by evidence which irrefutably proves the guilt of the accused." [translation by Amnesty International]

Finally, the draft law presented on 1 December 1995 by Oswaldo Sandoval Aguirre, Gilberto Siura Céspedes and

NAME: Jesús Alfonso Castiglione (second on the right), Amnesty international prisoner of conscience. Unjustly imprisoned since April 1993, he is serving a 20-year prison term.

Demetrio Patsias Mella, Congress members belonging to the government party *Cambio 90-Nueva Mayoría*, proposed the setting-up of a “Special High Level Commission charged with reviewing, assessing and proposing to the President, in an exceptional capacity, the granting of a pardon or commutation of a sentence to prisoners convicted” of terrorism-related crimes and “who are able to credibly prove their innocence.” [translation by Amnesty International]

In March 1996, an Amnesty International delegation met the president of Congress’ Justice Commission, Jorge Muñoz Zilches. The president told the delegation that, within the Justice Commission, a Sub-commission would be set up to study all these draft laws and to consolidate them in one single draft law for presentation to Congress. Amnesty International does not know whether this Sub-commission has yet started work.

President Fujimori has, on a number of occasions, accepted that persons falsely accused of crimes of terrorism are being held in the prisons of Peru. When visiting the prison of Yanamayo in Puno in November 1993, the President admitted that Miguel Ruiz Conejo, unjustly imprisoned from November 1992 to January 1994 for the crime of treason was, in his view, “innocent”, and when Miguel Ruiz Conejo was released in January 1994, the President admitted that his case was probably not unique. When the repeal of the Repentance Law was announced for 1 November 1994, the President explained that this measure would prevent “innocent people going to prison” and that cases which showed “compelling evidence of innocence” would be reviewed.

Despite these declarations and the above draft laws, hundreds of people unjustly accused of terrorism and treason continue to languish in prison. Amnesty International recognizes that the ordeal of the “innocent prisoners” has awoken intense concern among the people of Peru. The organization believes it to be vital that the authorities take the necessary measures to release them immediately and unconditionally. In the words of the Peruvian human rights magazine *Ideele*, in its November 1995 issue: “In Peru today everybody recognizes that among those imprisoned for terrorism there are a lot of innocent people. It is not possible to go on merely talking about them any longer. The time has come to act. The solution to the problem is there; specific minimum safeguards in relation to the detention and trial of persons accused of terrorism must be reinstated, and a safe and suitable mechanism for reviewing such cases must be put into force.”

CHAPTER 2

**“WITH A HUMAN FACE” - 10
ILLUSTRATIVE CASES OF
PERUVIAN PRISONERS OF
CONSCIENCE**

“It has gone beyond a matter of asking how many identifiable cases of innocent people mistakenly imprisoned there are and how many more there will be, for the majority of those affected are poor and come from remote parts of the country and are therefore not able, of themselves, to gain access to human rights organizations, churches and the mass media.”

*(Los Inocentes Tienen Nombre: 300
Historias de prisión injusta en el Perú,
November 1995)*

The number of possible prisoners of conscience in Peruvian prisons is not known. The number adopted by Amnesty International to date is only a tiny fraction of the hundreds of cases about which the organization has received information. It is the experience of Amnesty International that, for each name that becomes known, for each case that becomes news, there are many others who will remain for ever unknown.

Names: Nery Fermín Quispe Medina (*on the left*), Fortunato Sumino Taco (*on the right*), Amnesty International prisoners of conscience. The two doctors were unjustly detained in September 1992 and sentenced to 20 years' imprisonment.

Some prisoners of conscience in Peru, adopted by Amnesty International, are prominent personalities, active and well-known in public life. Others are community and trade union leaders. But the majority are “simple citizens”, people who have been

NAME: Segundo Centurión Pérez, former Amnesty International prisoner of conscience. Unjustly imprisoned for one year.

Name: Alvaro Villavicencio Whitembury, former Amnesty International prisoner of conscience, with his family, unjustly imprisoned for one year

imprisoned merely because they were peacefully exercising their human rights.

In November 1995, a group of human rights defenders in Peru published *Los Inocentes Tienen Nombre: 300 Historias de prisión injusta en el Perú*, with the aim of giving “the problem of the innocent prisoners a human face” and of affording “a profile and identity to those who generally fall victim to this type of injustice: the poor people of this country, the people who, from a judicial and economic standpoint, are the most vulnerable and defenceless.”

There follows a profile of 10 prisoners of conscience. Concluding the report is a full list of the cases adopted by Amnesty International as prisoners of conscience since 1992. Some have now been freed. But Amnesty International remains committed to the release of all those prisoners of conscience who remain in jail.

Myriam Guadalupe Gálvez Vargas, student and mother of two children

“I’ve never been able to understand the reason for my detention. At the DINCOTE^{xv} they told me that they were only carrying out an investigation, since a professor who taught me at the university was also under detention and they needed to carry out their inquiries,” wrote prisoner of conscience Myriam Guadalupe Gálvez Vargas in October 1995, in a letter to Amnesty International.

Name: Myriam Guadalupe Gálvez Vargas, Amnesty International prisoner of conscience. How long must her children (*photograph*) wait before the return of their mother, unjustly sentenced in 1994 to a 20-year prison sentence.

Myriam Gálvez, who is 30 years old, is serving a 20-year prison term for “crimes of terrorism”. She was charged in April 1993 and sentenced by a High Court a year later. The only basis for her conviction was a claim by the police that she had attended a university course with an alleged member of Shining Path, and that a note-pad belonging to her had been found, which they said contained handwritten notes about “low intensity warfare”.

In May 1994, a prosecutor attached to the Supreme Court of Justice claimed that there was no evidence that Myriam Gálvez had links with Shining Path. In spite of this, on 8 November 1994 the Supreme Court of Justice confirmed her sentence. The lawyer representing her has filed a petition before the Supreme Court of Justice asking for a review of her case. Meanwhile Myriam Gálvez remains in jail.

Julio Ismael Loa Albornoz, a practising Buddhist

According to information received by Amnesty International, the military judge who examined the case of Julio Ismael Loa Albornoz, in considering the sentence, concluded:

“... there is an element of doubt surrounding the participation of Julio Ismael Loa in actions or events which add up to the crime of treason. This element of doubt ought to favour the state and society and it is therefore preferable, before such uncertainty, to immediately impose a punishment which most favours society.” Having thus contravened one of the most basic principles of justice - the principle that every defendant is innocent until proved guilty - Julio Ismael Loa was sentenced to 15 years’ imprisonment on 30 June 1994.

Julio Ismael Loa was detained by the police in February 1993, after being identified as a Shining Path activist by two MRTA members seeking to benefit from Peru’s anti-terrorism Repentance Law. The two defendants subsequently withdrew their accusations. In May 1993, after the defendant and other witnesses had been examined before a judge, the prosecutor is reported to have said: “[...] it can be totally ruled out that Julio Ismael Loa Albornoz [...] has had any links whatsoever to a terrorist organization.”

However, Julio Ismael Loa’s ordeal did not end there. The examining judge neither upheld nor rejected the prosecutor’s opinion. He referred Julio Ismael Loa’s case to a High Court for judgement and sentencing in keeping with judicial procedures enshrined in the anti-terrorism legislation. However, the High Court did not even hear the case, but transferred it to a military tribunal, apparently for no other reason than that his case was part of a file in

which other defendants had been accused of the terrorism-related crime of treason.

On 14 November 1994, the High Court of War of the Peruvian Air Force annulled Julio Ismael Loa’s 15-year prison sentence and ordered a re-trial. At the re-trial, the military tribunal acquitted him of the crime of treason but ruled that this case should be referred back to a civilian court because there was evidence of crimes of terrorism. His defence lawyers appealed against this decision. On 9 August 1995, the appeal was upheld and Julio Ismael Loa was acquitted of all charges by the High Council of War. This verdict must be ratified or vetoed by the Supreme Council of Military Justice. Almost three years after having been falsely charged with treason and crimes of terrorism, Julio Ismael Loa remains in prison.

Antonia Alfaro Rubina, fishmonger

Antonia Alfaro Rubina has spent more than three years in prison. Her case records include testimony from the Pentecostal Church in her neighbourhood in the district of Canto Grande, Lima, that she was an active member of the community. Antonia Alfaro is illiterate; she is 37 years old and has three children. On 19 November 1992, she was arrested and beaten up in her house by members of DINCOTE, in the district of Canto Grande.

Her arrest is attributable to the detention by police three days before of a person accused of possessing explosives and who told them that the explosives had been obtained from a house in Canto Grande. When the police took him to the district to identify the house, he pointed out Antonia Alfaro’s and stated that she was the woman who had helped him to get the explosives.

The person caught transporting the explosives was acquitted, while a military

tribunal sentenced Antonia Alfaro to life imprisonment for the crime of treason. She was convicted despite the fact that the forensic tests carried out on her hands and clothing proved negative, and despite the fact that a search of her house turned up no trace of the explosives that had supposedly been hidden there.

Carlos Florentino Molero Coca, anthropology student

Carlos Florentino Molero Coca, who is 26 years old, was arrested on 30 April 1992, in a street in Lima. According to the information received by Amnesty International, he was tortured into confessing that he had been arrested in a house in possession of explosives and “subversive” literature. The judge examining his case decided there was insufficient evidence to link Carlos Florentino Molero Coca with crimes of terrorism. On 24 October, despite this legal ruling, he was sentenced to a 12-year prison term.

In June 1993, Carlos Florentino Molero Coca wrote to inform Amnesty International that during his interrogation by the DINCOTE he was “brutally tortured” and that this “seriously affected [his] physical integrity and mental health”. He went on to say that “a (hooded) member of the interrogation group told me he had been tried by my father, a former judge, and that they were going to ‘set me up’.” His father, Luis Alberto Molero Miranda, was one of about 120 judges and prosecutors who were removed from office in April 1992 when President Alberto Fujimori suspended the constitutional government. The fact that Carlos Florentino Molero Coca is the son of a judge who once tried one of his interrogators, seems to be the reason for his detention. He has been in prison for four years.

Marco Antonio Ambrosio Concha, sociology student

Marco Antonio Ambrosio Concha was arrested on 30 April 1992, the same day as Carlos Florentino Molero, and also on a Lima street. According to the information received by Amnesty International, Marco Antonio Ambrosio was also tortured during interrogation and accused of possessing explosives and “subversive” literature. In this case, too, the examining judge decided that there was no evidence to link him with crimes of terrorism. Nonetheless, on 24 October 1994 the High Court sentenced him to 10 years’ imprisonment, two years less than Carlos Florentino Molero, although the latter was accused of the same crimes.

His defence lawyers have lodged an appeal in the Supreme Court of Justice for the sentence to be quashed.

Emiliano Escobal Lucano, peasant

Emiliano Escobal Lucano was arrested on 25 August 1991 in the district of La Encañada, department of Cajamarca. The police arrested him for alleged participation in the attack carried out by an armed opposition group on 25 August 1991, in the district of La Encañada, when three police officers were killed.

According to Amnesty International’s information, the police suspected that Emiliano Escobal was involved because a witness to the attack “said he had heard the detonations and the shots and voices which seemed to be calling ‘*cumpa*’ or ‘*cuca*’”. The latter is a nickname of Emiliano Escobal’s since childhood.

Neither the body search nor the search of his house carried out by the police during the investigation revealed any incriminating evidence. The police, nevertheless, tortured and physically ill-treated Emiliano Escobal into confessing

his guilt. In addition, under pressure from the police, he supplied a list of names and was forced to involve four other people.

The High Court of Lambayeque sentenced him to a 20-year prison term on 15 June 1993. A year later, in August 1994, the Supreme Court of Justice annulled the sentence and ordered a re-trial.

To date, the new trial has not been held. In the meantime Emiliano Escobal, a 30-year old peasant and father of three children, remains in prison.

Siméon Encarnación Evangelista, trade union leader

Siméon Encarnación Evangelista has been in prison for three years. He was arrested on 30 March 1993 at his home, during a sweep and search operation carried out by members of the Navy and investigative police of Callao. According to the information received by Amnesty International, he was not allowed to be present during the search, during which eight "subversive" pamphlets were allegedly found. Siméon Encarnación denied that the pamphlets belonged to him and states that he was threatened and intimidated into confessing that they did. Fearing what might happen to his four daughters - one of whom was sexually harassed during the search - and to his wife, he signed the inventory of confiscated goods.

The examining judge expressed the view that there was no evidence to link Siméon Encarnación with Shining Path. Nevertheless, on 7 December 1993 he was sentenced to 12 years' imprisonment. The sentence was confirmed by the Supreme Court of Justice on 26 May 1995.

Siméon Encarnación is a trade union leader. He was also a member of a neighbourhood committee in Villa Señor de los Milagros, in Callao. He was an active

member of a free food distribution program, and President of the local School Parents Association.

NAME: Siméon Encarnación Evangelista , Amnesty International prisoner of conscience. He has been in prison since March 1993. He was unjustly sentenced to a 12-year prison term

Alfonso Rosely Chacón Rodríguez, teacher

Alfonso Rosely Chacón has been imprisoned since 1 April 1992. On that day, he was arrested by police arriving at the school where he taught, in the small village of Chirimoyo in the province of Cajabamba, department of Cajamarca. On the day of his arrest, the police had discovered that a stretch of the Chirimoyo-Cajabamba road had been mined with dynamite.

It appears that an alleged "repentant" had told the police that he knew Alfonso Rosely Chacón. However, during the trial proceedings the "repentant" stated that he had no evidence that Alfonso Rosely Chacón had links with armed opposition groups. Moreover, in March 1994 Amnesty International received a copy of a letter which the "repentant" had written to the organization on 22 April 1993, stating that after he had been arrested in August 1991, "every time the Colonel set out to arrest someone he got me out of the prison and

took me to the place of arrest or to Command headquarters, and forced me to accuse the people and gave me money and food and got me drunk and made me sign documents, making out that it was for the sake of my freedom”.

Despite this, on 12 February 1993 the High Court of Chiclayo, in the department of Lambayeque, sentenced Alfonso Rosely Chacón to 10 years’ imprisonment. His defence lawyers appealed to the Supreme Court of Justice to quash the verdict. The chief prosecutor requested the sentence be annulled. On 25 May 1995, the Supreme Court of Justice annulled the sentence and ordered a new hearing.

Alfonso Rosely Chacón was an active member of neighbourhood and religious organizations in his district. In the 1990 elections he was a spokesman for *Cambio 90*, the party which endorsed the first presidential candidacy of engineer Alberto Fujimori.

Four years later, Alfonso Rosely Chacón remains in prison. His new trial has not yet been held.

Juan Alberto Huapaya Palomino, trade unionist

Juan Alberto Huapaya Palomino has been unjustly charged and arrested for the same crimes of terrorism on a number of occasions since 1990. The first time, in September 1990, the DINCOTE accused him of belonging to an armed opposition group, the Patriotic Liberation Front (FPL), which was alleged to have carried out several armed actions between March and June 1990. According to DINCOTE, a group of former members of the Peruvian Communist Party ^{xvi} who publicly resigned from the party in April 1990 through a letter to the press, had gone on to be active members of the FPL.

NAME: Juan Alberto Huapaya Palomino, Amnesty International prisoner of conscience. He was imprisoned between January and October 1994. In July 1995 he was again detained and until now remains, unjustly, in prison awaiting re-trial.

When the case was heard by the 12th High Criminal Court of Lima in October 1992, the court decided to “definitively withdraw” the legal proceedings against him on the grounds that there was no evidence to link him with the FPL. However, on 29 January 1993, before the Supreme Court of Justice had confirmed this ruling, Juan Alberto Huapaya was again arrested by DINCOTE members in Lima and a new trial was opened against him for the same crimes of terrorism as the High Court had already decided to shelve in October 1992.

A year later, on 12 October 1993, a tribunal for the Supreme Court of Justice in Lima again acquitted him and Juan Alberto Huapaya was released. But this taste of freedom was brief. In February 1994, the Supreme court of Justice annulled the sentence of the 12th High Criminal Court and declared that there were “grounds for another judicial hearing”. As a result of this ruling, a new detention order was issued and on 19 July 1995 Juan Alberto Huapaya was arrested a third time.

Juan Alberto Huapaya is again in prison awaiting another hearing, facing the same charges as those for which he has already been tried and acquitted on two previous occasions.

Juan Alberto Huapaya had been working since 1984 for the municipality of metropolitan Lima. He was a member of the Federation of Municipal Workers of Peru, as well as the Union of Municipal Workers which he had led between 1988 and 1989. In August 1995, his wife wrote to Amnesty International: "This situation amounts to OBVIOUS POLITICAL PERSECUTION of my husband and hangs as a permanent threat over the Trade Union movement and Popular Leaders."

David Máximo Sulca Pérez, garment worker

David Máximo Sulca Pérez has spent over two years in prison. According to Amnesty International's information, in 1989 Shining Path assassinated one of his neighbours in the district of San Juan de Lurigancho, Lima, and dynamited the home of another for refusing to collaborate with the group. That same year, Shining Path members appeared at his house and asked him for economic help. Fearing the consequences, David Máximo Sulca offered them two shirts.

On 17 December 1993, DINCOTE agents came to his home. Not finding him there on that day, and not finding any evidence in the house that could link him with crimes of terrorism, they left a note requesting him to attend the DINCOTE offices in Lima.

The following day, 18 December 1993, David Máximo Sulca went of his own volition to the DINCOTE offices to clarify his situation. He was immediately arrested and informed that a Shining Path "repentant" had accused him of

collaboration on the grounds, among others, that he had given them two shirts and had been present at a meeting allegedly held by Shining Path in his house.

During interrogation, David Máximo Sulca was tortured and forced to confess to the charges which the "repentant" had levelled against him. Nevertheless, the latter subsequently denied in court that David Máximo Sulca had any link with Shining Path and stated that the DINCOTE agents had tortured him into involving the garment worker in crimes of terrorism.

On 18 January 1995, the trial hearing began in a criminal court of the High Court of Lima. The chief prosecutor requested a 20-year prison term. After spending two years in prison, David Máximo Sulca has still not been sentenced.

CHAPTER 3

SHINING PATH, THE MRTA AND HUMAN RIGHTS

NAME: Porfirio Suni Quispe, former Amnesty International prisoner of conscience. His daughter weeps over his body. He was killed by Shining Path in May 1991.

aliados”, “*Above the Two Hills: Counter-insurgency War and its Allies*”, Shining Path clearly set out its opposition to the concept of human rights. This internal document analyses the government’s counter-insurgency strategy developed under President Fujimori’s first administration. It was reportedly written almost entirely by Abimael Guzmán.

The systematic violation of human rights during the past 16 years has occurred against a background of widespread human rights abuses by Shining Path, Peru's principal armed opposition group. In addition to conducting armed operations against the security forces, Shining Path has been responsible for thousands of civilian deaths and has frequently tortured and killed its captives. Similar abuses, on a lesser scale, have been attributed to the MRTA, also engaged in armed opposition to the government.

“We start from the position that we do not subscribe either to the Universal Declaration of Human Rights or the Costa Rica Declaration [American Convention on Human Rights]. The position taken [by Shining Path] is quite clear. We reject and condemn human rights because they are reactionary, counter-revolutionary, bourgeois rights. They are presently the weapon of revisionists and imperialists, principally of Yankee imperialism.”

- Abimael Guzmán, Shining Path leader, 1991

In a document entitled “*Sobre las dos colinas: la guerra antisubversiva y sus*

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. Seven months later, it reportedly carried out the first action in what was to become a regular pattern of torturing and killing civilian captives. On 24 December 1980 members of Shining Path, known as senderistas, attacked a farm in the Andean highlands of Ayacucho and held captive its owner and employees. Two of them were tortured and then killed.

Since then Amnesty International has received regular reports of atrocities attributed to Shining Path. Most of the victims have been members of peasant

communities who were either suspected of collaboration with the military or else refused to join or support Shining Path. They have often been killed after mock trials conducted before forcibly assembled villagers. The victims have included hundreds of mayors and other local state authorities, community leaders, agronomists, engineers, and administrators working on government and independent development projects. Political and trade union activists who do not support the ideology and practices of Shining Path have also been systematically threatened and killed.

Many of these victims died in massacres. One of the first Shining Path massacres documented by Amnesty International took place on 3 April 1983, during an attack on the community of Lucanamarca, in the department of Ayacucho. The massacre was carried out during a series of Shining Path attacks and counter-insurgency operations by the Peruvian security forces in the first four months of 1983. Hundreds of civilians and combatants on both sides were killed during these operations, many of them under circumstances which suggest they were summarily executed.

In the Shining Path attack on Lucanamarca in April 1983, local authorities and members of the community were systematically sought out and killed for allegedly collaborating with the security forces. At the time, Amnesty International reported that at least 67 people were killed, most of them after capture and mock trials by Shining Path armed units. The Lucanamarca massacre was subsequently confirmed by Abimael Guzmán, the leader of Shining Path currently serving a life sentence, in a taped interview in 1988 with *El Diario*, a newspaper which has openly supported Shining Path. In the interview Abimael Guzmán stated: "In the face of [...] the reactionary operations of the military we replied forcefully with our own operation: Lucanamarca ... over 80 people were wiped

out there, that is a fact, and we admit it, there were excesses there [...] on that occasion it was the Central Directorate itself which planned the operation and gave the orders ...".

The Lucanamarca massacre set the precedent for what was to become a regular pattern of gross human rights abuses, including mass killings, by Shining Path. Over the years Amnesty International has received reports of hundreds of cases in which peasants, either individually or in groups, were rounded up, harangued, and then deliberately and arbitrarily killed by Shining Path. For example, on 13 May 1991, Shining Path was reported to have killed peasant leader Porfirio Suni Quispe, who had been elected regional deputy for Puno. In May 1988, he had been arrested by police and falsely accused of "terrorist" activities. He remained in prison for 10 months, during which period Amnesty International adopted him as a prisoner of conscience. In March 1989, the charges against him were dropped and he was released.

On the night of 10 October 1992 a Shining Path unit attacked the community of Huayllao, located in the district of Tambo, province of La Mar, Ayacucho department. The massacre resulted in the killing of 47 peasants, including 14 children aged between four and 15. The community had established a civil defence patrol but was said to have been armed with no more than five shotguns at the time. According to the mayor of Tambo, the massacre was "one of the most horrible massacres that has afflicted our department [...]. It was an unspeakable and savage attack in which the elderly, children and defenceless women were killed".

With the implementation of President Fujimori's counter-insurgency strategy and the arrest of the leadership of Shining Path and the MRTA in 1992, both organizations began to suffer major set-backs. The imprisonment of Shining Path's leadership and of hundreds of its

activists led to requests by Abimael Guzmán and other Shining Path leaders for talks with the government on a “Peace Accord”. The first of these requests, made in September 1994, has been repeated on a number of occasions by Abimael Guzmán and other Shining Path leaders. To date the government has rejected these requests.

The call for a “Peace Accord” by the imprisoned leadership of Shining Path would appear to have caused a major rift within the organization. A splinter group known as Sendero Rojo, Red Path, has repeatedly indicated that the armed campaign would continue. The rift has led to reprisals, including torture and summary executions, by members of Red Path against Shining Path militants who have “repented” or have openly supported the call for a “Peace Accord”. The rift is reflected in the fact that Shining Path and Red Path prisoners in Lima's Castro Castro Prison are held in separate wings to avoid, in the words of prison visitor and human rights defender Hubert Lanssiers, “verbal and physical clashes between these two groups.

Those members of Shining Path supporting the position that armed conflict should continue, and who would appear to be aligned with Red Path, continue to be active. Despite President Fujimori's claims, made in 1992, that the authorities would completely defeat Shining Path by mid-1995, attacks by senderistas continue to be reported from several departments, particularly Huánuco, San Martín, Ucayalli, and Lima.

During the second half of February 1995, Amnesty International received reports of another massacre by Red Path. On this occasion 20 civilians were killed in three separate attacks, in the vicinity of the towns of Aucayacu and Tingo María, Leoncio Prado province, Huánuco department. According to Peruvian media reports, out of the 20 people killed, seven were killed in circumstances which suggest that Red Path first took them captive.

In the first of these attacks, the victims included Félix Tolentino Villanueva and Glicerio Tadeo. Both were taken captive by members of Red Path, conducted to the main square of the village of Anda, some 30 kilometres from Tingo María, and killed with machetes. In a separate attack, four members of a civil defence patrol, Emerson Eliseo Rivera, Matarío Enciso, Eliseo Rivera Sacramento and Juan Salinas, from the hamlet of Julio C. Tello, some 20 kilometres from Aucayacu, were reportedly taken to an empty plot of ground and killed in front of the community. According to reports, the assailants told the community that they “deserved this punishment because they promoted civil defence patrols”. In the third attack, on 20 February 1995, Fernando Mori, a chauffeur from Aucayacu, was captured and then killed by *senderistas*.

On 4 October 1995 Shining Path reportedly carried out a further massacre of peasants, this time in the town of Aucayacu itself. On this occasion at least five peasants were summarily executed. Religious workers based in Aucayacu informed the CNDDHH they had reliable evidence that, in addition to these five, many more peasants had been massacred in the same incident.

The assassination on 6 March 1996 of community leader Pascuala Rosado Cornejo, in a street in Huaycán, a working-class area of Lima, bears the hallmark of Red Path. Pamphlets left around the body contained slogans calling *for an extension of “the peoples’ war” and “Crush the LOD [Right Wing Opportunist Line]”, a key watchword of the opponents of the “Peace Accord” promoted by Abimael Guzmán. In the press release sent by Amnesty International to the Peruvian press on the day of the killing, the organization described the crime as “repugnant” and expressed its sympathy “for the grief of Pascuala Rosado’s family”.*

Over the years, Amnesty International has continued to receive reports of human rights abuses by members of the MRTA. For example, in Lima on 11 September 1992, the MRTA kidnapped the businessman David Ballón Vera, the owner of a zinc mine and ex-president of the state oil company Petroperú. After the kidnapping, the MRTA contacted the family demanding a ransom. In February 1993, more than five months after the money had been paid, the body of David Ballón was found with two bullet wounds in the head and bearing the marks of torture.

*On the night of 30 November 1995, there was a shoot-out in the residential area of La Molina, Lima, between members of the police and a group of MRTA members, who were hiding in a safe house there. In flight from the police, the MRTA members entered a nearby house and took its occupants - three children, their mother and their grandmother - hostage. According to the Peruvian weekly *Caretas*: "Minutes after, the subversives [...] mined the backstairs and positioned mattresses like trenches." The following morning the MRTA members released the family and surrendered.*

Amnesty International has repeatedly and unequivocally condemned the grave human rights abuses by Shining Path, Red Path and the MRTA. The organization's condemnation of such abuses is based on principles derived from international humanitarian law, in particular humanitarian standards enshrined in Common Article 3 of the Geneva Conventions of 1949.

Amnesty International urges the leaders of Shining Path, Red Path and the MRTA to fully respect and abide by the humanitarian standards enshrined in Common Article 3, paragraphs 1(a), (b) and (c) of the Geneva Conventions of 1949 which protect people taking no part in the conflict from "violence to life and person", being taken hostage and "outrages on

personal dignity, in particular humiliating and degrading treatment."

CHAPTER 4

RECOMMENDATIONS

"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

- Article 10, Universal Declaration of Human Rights

“Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

- Article 9 (1), International Covenant on Civil and Political Rights.

International human rights norms and national legislation require that the Government of Peru respect at all times the right of everyone to a fair trial. This right is enshrined in the Constitution of Peru and in the human rights treaties to which Peru is a State Party, as well as in Articles 9.2, 9.4, 14 and 15.1 of the International Covenant on Civil and Political Rights and Articles 7.4 - 7.6 and 8 of the American Convention on Human Rights. In order to eliminate the systematic pattern of arbitrary detention and unfair trials which persists in Peru, it is both essential and of the utmost urgency that the Government reinstate such a right.

Amnesty International urges the Government of Peru to:

I. Release all prisoners of conscience immediately and unconditionally

II. Ensure prompt and fair trials for all those prisoners accused of terrorism-related offences

The Government must promptly and comprehensively review the present anti-terrorism laws to ensure that pre-trial and trial procedures contained in these laws are brought into line with those set out in international fair trial standards.

III. Implement judicial safeguards

The judiciary should receive the support and necessary resources to carry out its duties.

Judges dealing with *habeas corpus* petitions, public prosecutors and members of the Ombudsman’s Office should be encouraged to exercise their authority to request immediate and unrestricted access to all places of detention, including military bases in the emergency zones.

Judges should have full authority to order that the detainee be brought before them. Failure to present the detainee before the judge should be sanctioned.

International standards pertaining to the judiciary, including those contained in the UN Basic Principles on the Independence of the Judiciary, should be incorporated in Peruvian law and legal practice.

IV. Compensate the victims

Victims of arbitrary detention should receive compensation.

V. Promote human rights awareness

The Government should ensure that all members of the judiciary, prosecutors attached to the Public Ministry and members of the Ombudsman’s Office receive adequate training on human rights standards, both domestic and international, and the means for their protection.

The Government should adopt and publish a code of conduct for all members of the judiciary. This code should conform to the UN Code of Conduct for Law Enforcement Officials.

Appendix 1

Features of the anti-terrorism laws and unfair trials

Between May and November 1992 President Fujimori and his Council of Ministers, who ruled the country by decree law up to the end of December of that year, issued a new set of wide-ranging anti-terrorism decree-laws. Decree Laws _ 25.475 and _ 25.659 are the basic laws which regulate the procedure by which the police and courts handle terrorism-related cases.

Decree Law _ 25.475, contains the basic definition of crimes of terrorism now in use in Peru. Article 2 states: “[The person] who provokes, creates or maintains a state of uncertainty, alarm or fear among the population, or part of it; [who] carries out acts against the life, physical integrity, health, freedom and security of individuals, or against private and public property, the security of public buildings, means of communication, electricity generating plants and pylons, or any other property or service; [and who] through the use of weapons or explosive devices or substances, or through the use of any other means capable of causing damage or a serious disturbance of the peace or affects international relations or the security of civil society and of the State, will be deprived of his liberty for not less than 20 years”. (unofficial translation)

Decree Law _ 25.659 contains the definition of the terrorism-related crime of “treason”. The crime of “treason” is defined in terms of Article 2 of Decree Law _ 25.475, but takes into account a set of aggravating circumstances. This decree also provides for civilians accused of treason to have their cases heard under the jurisdiction of military tribunals.

The emergency Government has also issued other decrees which added to or

modified the procedures outlined in these two decrees. Subsequently Congress approved amendments to the legislation on four separate occasions: in November 1993, November 1994, April 1995 and March 1996.

Amnesty International believes that prior to the adoption of the first set of amendments in November 1993, the following features of the legislation, viewed singly and as a whole, conspired to undermine international fair trial standards:

- *the virtually unlimited powers granted to the police in questioning suspects and formalizing charges;*
- *the limitations placed on access to the accused by representatives of the Public Ministry and independent lawyers during the police investigation stage;*
- *the inordinately lengthy periods during which the accused are held while awaiting trial;*
- *the limitations imposed on examining judges, including the fact that such judges have no other choice than to refer cases for judgement and sentence to a High Court;*
- *the prohibition imposed on police and military personnel involved in the detention and questioning of the accused from appearing as witnesses;*
- *the impossibility of granting the accused any form of bail or conditional liberty at any time;*
- *the impossibility of anyone petitioning for habeas corpus in favour of the accused at any time during the police investigation and trial stages;*

- *the transference of those charged with the “crime of treason” into the jurisdiction of military tribunals;*
- *the short periods allowed for conviction, sentencing and appeal;*
- *the prohibition imposed on the lawyer chosen by the defendant to simultaneously represent other defendants in terrorism-related cases;*
- *the fact that trials, whether civilian or under military jurisdiction, are held in secret;*
- *the possibility of the accused being tried, convicted and sentenced in absentia.*

In November 1993 Congress passed the first set of amendments. Their effect was to:

- *allow independent lawyers to simultaneously represent more than one defendant;*
- *re-introduce the right to habeas corpus;*
- *abolish the trial, conviction and sentencing of prisoners in absentia;*
- *permit examining judges, in cases being heard under the jurisdiction of the civilian courts, to rule that defendants be unconditionally released if there was no case to answer. (However, such rulings could not be put into effect by examining judges, since they have to be referred for ratification or veto to the High Court at which the defendant is tried.);*
- *make provision for military tribunals to review sentences in those cases in which proof as to the innocence of the defendant was ignored by the tribunal.*

In November 1994 Congress repealed the anti-terrorism Ley de Arrepentimiento, Repentance Law. The Repentance Law, which came into effect in May 1992, included among its provisions clauses which benefited members of the armed opposition who supplied information leading to the capture of other alleged members of the armed opposition. The benefits available to members of the armed opposition under the Repentance Law consisted of either the exemption, reduction or remission of their sentence.

In April 1995 a further set of amendments to Peru's anti-terrorism legislation was passed by Congress. The amendments, contained in Law _ 26.447, came into effect on 22 April 1995, with the exception of those contained in Article 1. The latter is currently expected to come into effect on 15 October 1996.^{xvii}

Article 2 of Law _ 26.447 stipulates that those arrested on suspicion of being implicated in a terrorism-related crime must have prompt access to a defence lawyer from the moment the police initiate their investigations, even if the prisoner is held in incommunicado detention. Article 2 also stipulates that during a suspect's statement to the police, a representative of the Public Ministry and a defence lawyer must be present.

Article 3 of Law _ 26.447 repealed anti-terrorism Decree Law _ 25.564, which reduced the minimum age of criminal responsibility for “crimes of terrorism” from 18 to 15 years. As from 22 April 1995 the minimum age of criminal responsibility reverted to 18 years.

In March 1996, Congress passed a law adding a clause to Decree Law _ 25.475. The amendment allows for the issuing of a summons for a new trial in cases where the Supreme Court of Justice has annulled a verdict of acquittal.

Despite the positive amendments to Peru's anti-terrorism criminal laws, Amnesty International believes that the laws retain many features which fail to conform to international pre-trial and trial standards, because they retain the following features:

- *the virtually unlimited time granted to the police in questioning suspects and formalizing charges. (During their investigations the police can hold a prisoner for up to 15 days and, should they decide it necessary for the effective completion of their investigations, the police may extend such a period indefinitely);*
- *the inordinately lengthy periods for which the accused may be held in prison while awaiting trial. (The periods may extend to 30 months for terrorism-related cases “of a complicated nature” and, in cases which prove “especially difficult”, the period of pre-trial imprisonment may be extended to five years);*
- *the limitations imposed on civilian examining judges, including that such judges have no choice other than to refer all their cases for judgment and sentence to a High Court;*
- *the prohibition imposed on police and military personnel involved in the detention and questioning of the accused from appearing as witnesses before civilian or military courts, either at the hearings convened by examining judges or at the trial proper and the subsequent appeal hearings;*
- *the impossibility of granting the accused any form of bail or conditional liberty at any time after the accused is detained;*
- *the fact that people charged with the terrorism-related “crime of treason” must be transferred into the jurisdiction of military tribunals;*
- *the short periods allowed for judicial examinations, trials and appeals in both civilian and military courts. (The maximum periods allowed for judicial examination in civilian lower courts is 30 consecutive days, extendable by a further 20 days; 15 consecutive days for the trial in civilian High Courts; and 15 days for appeal hearings before the Supreme Court of Justice. In cases heard before military courts, the examination, trial and sentence must all be completed within 10 days);*
- *the fact that trials, whether under civilian or military jurisdiction, are not held in public;*
- *the continuing use of measures designed to conceal the identity of civilian and military judges and other court officials involved in terrorism-related hearings.*

Appendix 2

International standards for the protection of human rights, including

aspects of the fundamental right to fair trial

United Nations standards

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

Convention on the Elimination of All Forms of Discrimination against Women

Basic Principles on the Independence of the Judiciary

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

Organization of American States standards

American Convention on Human Rights

Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

Appendix 3

Amnesty International's reports on human rights violations in Peru published since 1993

Peru: Human rights since the suspension of constitutional government (AI Index: AMR 46/13/93), May 1993

Peru: Anti-terrorism laws continue to fall short of international human rights standards (AI Index: AMR 46/05/94), April 1994

Peru: Amnesty International's concerns about torture and ill-treatment (AI Index: AMR 46/19/94), November 1994

Peru: Reforms of anti-terrorism law fail to match international human rights standards (AI Index: AMR 46/06/95), October 1995

Women in Peru: Rights in jeopardy (AI Index: AMR 46/19/95), November 1995

Peru: Human Rights in a time of impunity (AI Index: AMR 46/01/96), April 1996

ENDNOTES

Name: Wilfredo Más Trigoso, former Amnesty International prisoner of conscience, he was unjustly imprisoned for five months with his family. He was unjustly imprisoned for seven months.

Name: Zaccaria Hubert Laissiers is a human rights defender in Peru and member of the Government Commission for a Dialogue with Organizations for the Defence of Human Rights. In 1995 he received the *Angel Escobar Jirado National Human Rights Prize*, awarded by the National Coordinating Committee for Human Rights (CNDDHH), a Peruvian non-governmental organization.

ii. One of the premises forming the basis for the draft law presented to the Peruvian Congress by the Ministry of Justice in July 1995 in an attempt to resolve the situation of prisoners unjustly accused of crimes of terrorism in Peru.

iii. Translation by Amnesty International. See Document UN CCPR/C/79/Add.23, par.8.

iv. The first anti-terrorism law introduced to fight Shining Path was passed in March 1991, during the government of President Fernando Belaúnde Terry. Substantially modified in March and June 1987, during the government of President Alan García, this law remained in operation until May 1992. Under this anti-terrorism legislation Amnesty International adopted at least 200 individuals as prisoners of conscience. The vast majority of these prisoners were released before the present anti-terrorism laws came into effect.

v. “Prisoners unjustly accused of crimes of terrorism” and “innocent prisoners” are equivalent terms in Peruvian human rights discourse. In this context Amnesty International defines these prisoners as prisoners of conscience.

vi. *Los Inocentes Tienen Nombre: 300 Historias de prisión injusta en el Perú*, Lima, November 1995.

vii. See Appendix 1 for the list of features in the anti-terrorism legislation which Amnesty International believes fall short of international fair trial standards. The following Amnesty International reports also contain an analysis of these laws: *Peru: Human rights since the suspension of constitutional government* (AI Index: AMR 46/13/93), May 1993; *Peru: Anti-terrorism laws continue to fall short of international human rights standards* (AI Index: AMR 46/05/94), April 1994; and *Peru: Reforms of anti-terrorism laws fail to match international human rights standards* (AI Index: AMR 46/06/95), October 1995.

viii. Peru ratified both conventions in 1978.

ix. See UN E/CN.4/1994/7/Add.2.

x. The practice of parading terrorist suspects before the television cameras or the publication of their photographs in the press was abolished in January 1995, but persons suspected of treason were excluded from this norm.

xi. Article 118 (21) of the Political Constitution of Peru states: “It is the responsibility of the President of the Republic: To grant pardons and commute sentences. To exercise the power of

pardon in processes where the period of investigation has exceeded twice its maximum deadline.”

xii. This *Note verbale* was made public by the UN Economic and Social Council with the reference E/CN.4/Sub.2/1994/51, 15 August 1994.

xiii. The organization is aware that on 1 December 1995, President Alberto Fujimori issued Supreme Decree _ 09-95-JUS, stipulating that the right to pardon provided in Law _ 26.329, issued on 2 June 1994, and creating a “Special High Level Commission to assess [cases] and advise the President, in an exceptional capacity, where the right of pardon might be granted to prisoners facing trial” should not be subject to “restrictions or prohibitions in respect of certain crimes.” In this connection, Article 1 of the Supreme Decree states: “The Special High Level Commission, created by Law _ 26.329, will propose to the President of the Republic that the right of pardon be granted to prisoners facing charges for crimes of terrorism, who have been deprived of their freedom in excess of twice the time limit allowed for the examination phase plus its extension period, *so long as there is evidence that they have been the object of criminal charges in relation to not possessing identity documents.*” (The translation and the italics are Amnesty International’s). Clearly this Supreme Decree does not resolve the problem of prisoners unjustly held on charges of terrorism, since the President of Congress’ Justice Commission informed Amnesty International, in March 1996, that his Commission would be studying various draft laws designed to find solutions to this problem.

xiv. Decree Law 25.659 came into force on 7 August 1992 and defines the crime of treason in relation to terrorism.

xv. DINCOTE, National Directorate Against Terrorism, Peru’s special anti-terrorism police force.

xvi. The Peruvian Communist Party is a legal political party, not to be confused with the Communist Part of Peru (Shining Path).

NAME: Juan Alberto Huapaya Palomino,
Amnesty International prisoner of conscience.
He was imprisoned between January and
October 1994. In July 1995 he was again
detained and until now remains, unjustly, in
prison awaiting re-trial.

xvii. Article 1 of Decree Law _ 26.447 abolishes those provisions in Peru's anti-terrorism legislation providing for the identity of the judges, prosecutors and other judicial officers of the High Courts and Supreme Court of Justice to be concealed. In its place, Article 1 stipulates that trials and appeal procedures in terrorism-related cases must be subject to procedural and administrative norms that govern all common cases under civilian jurisdiction. This means, in practice, that judges, prosecutors and other legal officers involved in terrorism-related cases being heard before the High Courts and the Supreme Court of Justice will be identified by their names and not by secret codes, and that trial hearings will be held in public. The article does not affect cases under military jurisdiction. Military tribunals, by definition, are held behind closed doors.