

PERU

@Prosecution calls for case of "disappeared" student to be closed

Amnesty International is concerned that the court action following the "disappearance" of student Ernesto Rafael Castillo Páez, who was last seen in October 1990 when he was bundled into the boot of a police car in Lima, is reportedly being brought to a halt.

The state prosecutor has reportedly determined to drop charges against the police officers alleged responsible for the "disappearance", and requested that the court's investigation be closed. The initial charges stem from judicial inquiries that determined that Ernesto Castillo had been illegally detained by the *Policía Nacional*, National Police, and "disappeared". The new measures could result in impunity for those involved and could pose additional barriers to resolving Ernesto Castillo's fate.

According to eye witnesses, the twenty-two-year-old sociology student was detained by members of the police in the Parque Central of the Villa El Salvador neighbourhood of Lima. They said that he was handcuffed, forced into the boot of a police car and driven away. Police authorities subsequently denied any knowledge of his detention.

On 25 October a petition of *habeas corpus* was submitted before a tribunal by Ernesto Castillo's father. On 31 October the judge of the 24th Court in Lima, Elva Greta Minaya Callo, responded to the petition by issuing a resolution stating that there was evidence to conclude that the student had been detained by the police. She ordered his immediate release.

The case of Ernesto Castillo is exceptional: apparently it is the first time in Peru that a *habeas corpus* has been declared "justified" (*fundada*) by a judge since early 1983, when "disappearances" were first reported in the context of counter-insurgency activities.

The lower court's ruling was subsequently upheld by a second Lima court, the *Octavo Tribunal Correccional*, Eighth Correctional Tribunal, which confirmed the presumption that Ernesto Castillo had in fact been detained, and stated that the continued detention not only was illegal, but also an abuse of authority, since police officers denied the detention and failed to release Ernesto Castillo, in spite of the lower court's order.

Despite prosecutions having subsequently been brought against police officers on the instructions of the Eighth Correctional Tribunal, the state prosecutor appealed to the Supreme Court to annul the *habeas corpus* ruling. Although Peru's *habeas corpus* law declares a resolution to be definitive after being upheld by two courts, the Supreme Court annulled

the lower court's ruling. This was denounced on 15 April 1991 by the Chamber of Deputies of the Peruvian Congress, in a motion accusing the *Segunda Sala Penal de la Corte Suprema*, Criminal Section No.2 of the Supreme Court, of having "committed a crime against their official and professional duties", thereby perpetrating an injustice against the State and Ernesto Castillo.

The case was subsequently heard before the *14° Juzgado Penal*, 14th Penal Court, in Lima. On 14 July 1992 the prosecution told the court that the two police officers accused should be convicted of "resisting authority", but that further charges should be dropped on the grounds that "it could not be proven" that the arrest took place. The prosecution further requested that the investigation into the "disappearance" of Ernesto Castillo be suspended and the case archived.

Amnesty International is concerned that the suspension of the investigation could mean that the fate of Ernesto Castillo will never be resolved. Insofar as the measures taken ensure impunity for the police officers responsible for his "disappearance", the government of Peru may also be providing the context for further "disappearances" in the future.

This document is a follow-up to external document Peru: Supreme Court annuls habeas corpus on "disappeared" student; bomb attack on the family lawyer, AI Index: AMR 46/05/91, April 1991.

General Background

President Fujimori and his government assumed power on 28 July 1990, inheriting a legacy of gross human rights violations dating back to January 1983, including thousands of cases of "disappearance", extrajudicial execution and torture. In spite of the government's pledges to respect human rights, violations perpetrated by members of the security forces have continued to be reported. During the first two years of the new government Amnesty International has received information on 563 "disappearances" following detention by the security forces, although the true figure may be far higher. By the end of this period the fate of 425 of these victims remained unknown and 55 were found dead. As far as is known, in the great majority of individual cases no investigations have been initiated and Amnesty International knows of only two cases in which the alleged perpetrators of human rights violations have been convicted under the present government.

5 April 1992 Coup

On 5 April 1992 President Alberto Fujimori broadcast a surprise speech to the nation in which he announced the immediate dissolution of Congress and stated that the country was to be ruled by a transitional executive-led Government of Emergency and National Reconstruction. He also announced a reform of the Constitution and of Congress, the judiciary and the Public Ministry, all of which have a responsibility for investigating human rights violations. Following the announcement, the executive closed down the judiciary and the Public Ministry for a period of four weeks. Over one hundred magistrates and judges were suspended, many judges and prosecutors were dismissed and the Attorney General resigned.

The closure of the judicial system and the Public Ministry meant that alleged human rights violations were not being officially documented and investigated, and that detainees did not have access to judges and representatives of the Public Ministry. On 28 April a decree law was issued, establishing a temporary Supreme Court whose members were chosen by the executive.

For further details of the dissolution of Congress and its implications, please see [Peru: Human rights during the government of President Alberto Fujimori](#), AI Index: AMR 46/18/92, May 1992.

"Disappearance" Legislation

In April 1991 Peru became the first country in Latin America to explicitly define "disappearance" ordered or carried out by the authorities as a criminal offence, as stated in Article 323 of its new Penal Code. Amnesty International welcomed this measure. However, this law was repealed on 6 May 1992 when the government published Law 25,475, establishing new standards for crimes related to terrorism: Article 22 of this law abolished the crime of forced detention-"disappearance".

Subsequently, on 26 June, a decree law re-establishing the crime of forced "disappearance" was issued which became effective on 2 July when it was published in the government's official newspaper, *El Peruano*. The new law is almost the same as the law which was abolished in May: it includes the same penalties and description of the crime. The major difference is that the new law states that the "disappearance" must be "properly verified" ("*debidamente comprobada*"). Unlike the original "disappearance" law, the new one does not fall under anti-terrorism law.