

PERU EXTERNAL DOCUMENT
EMBARGO DATE 16 MAY 1996

PERU: Human Rights in a time of impunity

Captions

General Rodolfo Robles Espinoza, who publicly stated that military members of the *Grupo Colina* “death squad” were responsible for the Barrios Altos and La Cantuta University massacres in 1991 and 1992 respectively.

Demonstration in Lima, 1991. The banner reads: “Stop torture. We want peace”. © *Virgilio Grajeda*

The parents of Ernesto Rafael Castillo Páez, with a picture of their son. A 22-year-old student, he “disappeared” in October 1990 after being detained by police officers. © *Vera A. Lentz*

Detention by the security forces near Uchiza, San Martín department, in 1991. The *de facto* impunity for human rights violations enjoyed by the security forces became legalized in June 1995, with the introduction of the amnesty laws. © *Alejandro Balaguer*

The children of prisoner of conscience Myriam Guadalupe Gálvez Vargas. She is serving a 20-year prison term for “crimes of terrorism”, imposed after an unfair trial.

Above: Ángel Escobar Jurado, secretary of an independent human rights organization in Huancavelica, “disappeared” in 1990. He was last seen being taken towards a military barracks.

Below: Felicita, wife of Ángel Escobar, and the couple's two children. They have joined the thousands of relatives searching for loved ones who have “disappeared”.

Dr Augusto Zúñiga Paz recovering in hospital from injuries caused by a letter bomb. A human rights lawyer, he was then working on the “disappearance” of Ernesto Rafael Castillo Páez. Dr Zúñiga now lives in exile. © *Vera A. Lentz*

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“The party was wonderful until the hooded killers turned up ... That night, at 10.30, seven individuals ... burst into the yard. ‘Everyone lie down on the floor!’, ordered one of them, his face covered ... Benedicta and her friend Nelly Rubina ... tried to hide behind the beer crates, when two men entered into the room firing. Nelly's aunt ... hearing the screams ... hurried into the house and found them all on the floor: ‘They were dead and there was blood everywhere.’ Nelly was on an armchair, face down, with her body full of bullets. Benedicta was less than a metre away ... with her head in her arms, as if she had tried to hide. Outside was the little boy Javier ... his eyes wide open, a huge wound in his forehead. Killed, next to his father Manuel. No longer would they listen to music, drink beer, or celebrate a special occasion. All that was left was a river of blood staining the cold tiles of the yard.”¹

Fifteen men, women and children were killed at that fateful party, held in November 1991 in Barrios Altos, a central district of Peru's capital, Lima. Evidence suggests the killings were the work of a “death squad” known as the *Grupo Colina*, attached to Peru's National Intelligence Service (SIN). The killers have never been brought to justice.

The victims of Barrios Altos are not alone. During the past 16 years thousands of Peruvians have been the victims of widespread and systematic human rights violations at the hands of Peru's security forces. In only a handful of cases have those responsible been brought to justice and punished. Impunity for human rights violations has characterized the policies of four successive Peruvian governments.

Throughout these years impunity became institutionalized but was never officially recognized. That changed in June 1995 with the passing of Peru's amnesty law. The amnesty law pardoned all members of the security forces and civilian officials for their involvement in human rights violations committed between May 1980 and mid-June 1995. The authorities justified the amnesty law as a measure which would contribute towards the “pacification and national reconciliation” of Peru.

The amnesty law is not only a deliberate rejection of the call for justice. It also serves to conceal the full truth behind Peru's appalling human rights record. In a courageous move, a judge investigating the Barrios Altos massacre sought to establish the truth and bring those responsible to justice by declaring the amnesty law unconstitutional and in violation of international human rights standards. In response Congress immediately passed a further law which prevents the judiciary from deciding on the legality or applicability of the amnesty law.

Under counter-insurgency strategies developed before President Alberto Fujimori first came to power in July 1990, the authorities relied almost exclusively on emergency powers and the capacity of the security forces to defeat the armed opposition militarily. Military operations were frequently carried out on the premise that the population in remote rural areas and urban shanty towns were members or sympathizers of one of Peru's two armed opposition groups, the Communist Party of Peru (Shining Path) or the Túpac Amaru Revolutionary Movement (MRTA). The result was not the “pacification” of these areas but the creation of a climate of terror for the civilian population. Entire

villages and shanty-towns became the target of indiscriminate military operations. Thousands of peasants and shanty-town dwellers fell victim to arbitrary detention, “disappearance”, summary execution and torture.

This approach neither repulsed nor even contained the advances of the armed opposition. By the time President Fujimori's Government assumed power, Shining Path had expanded its sphere of influence from Peru's rural hinterland to the urban sprawl of Lima, where one third of the country's 22 million people live. Shining Path, and to a lesser extent the MRTA, carried out significant armed actions in Lima during the first two years of President Fujimori's government, calling into question the state's capacity to survive.

Against this background, President Fujimori's first administration sought to develop a new counter-insurgency policy which ostensibly upheld human rights. At his inaugural speech in July 1990, President Fujimori made specific reference to the implementation of a human rights policy. He stated: “The unrestricted respect and promotion of human rights will be a firm line of action for my government ... the terrorist violence our fledgling democracy currently faces cannot justify, in any way, the occasional or systematic violation of human rights. The counter-insurgency policy which my government is to launch will be conducted within the principles enshrined in the Constitution and laws of Peru. This perspective will be applied, with justice and fairness, both to those who currently seek to attack our society as well as those who seek to defend it”. These sentiments have been repeated on numerous occasions by the president and representatives of his government, and were reiterated after President Fujimori began his second five-year-term of office in July 1995.

Some of the human rights steps taken by the government since 1990 have contributed towards a significant reduction in “disappearances” and extrajudicial executions. In September 1991 the government authorized Public Ministry prosecutors to enter military and police installations throughout the country to investigate alleged “disappearances” and the condition of the detained. In the same month the International Committee of the Red Cross was granted access to military bases and police detention centres in the emergency zones. These steps were complemented by the computerized National Register of Detainees, which came on line in February 1995 and is designed to help prevent “disappearances”. These measures were largely the result of pressure on the government to improve its human rights record from the international community, including the Government of the United States of America. In return the Peruvian Government would receive financial assistance from the International Monetary Fund and economic aid projects. The pressure also resulted in the government having to ensure that these measures were relatively effective.

The government continues to propose measures which, if adequately resourced and effectively implemented, could contribute significantly to the protection of human rights. However, these proposals are sometimes viewed with scepticism by Peruvian human rights organizations. The Ombudsman's Office, an institution charged with upholding human rights which was announced in the 1993 Constitution, is a case in point. When, in January 1994, a bill outlining the basic structure and functions of the Ombudsman's Office was published, the provisions included in the bill were initially welcomed by human rights organizations. However, when the bill became law in August 1995, it contained a significant omission which curtailed the powers of the Ombudsman's Office.

The new law made provision for inspecting establishments under the direction of the Peruvian National Police, but omitted inspections of establishments under the command of the Armed Forces. This does not augur well for human rights. Since it was given emergency powers in December 1982, the army has been accused of responsibility for most cases of “disappearance” and extrajudicial execution. Human rights defenders claimed the omission was unconstitutional and a sign of the military's influence over the government. Exempting military bases and other army establishments from inspection by an independent ombudsman reinforces the sense of impunity enjoyed by the Armed Forces.

The government's lack of real commitment to upholding human rights had been highlighted in 1992 with the introduction of new anti-terrorism laws which systematically denied prisoners accused of terrorism-related offences the fundamental right to a fair trial. In effect, the government removed one pattern of systematic human rights violations by replacing it with another; the “disappearance” and extrajudicial execution of thousands of people has been exchanged for thousands of prisoners who are denied fundamental guarantees of a fair trial. In addition, Peru's 1993 Constitution extends the scope of the death penalty to include the crime of “terrorism”. In December 1994 the Inter-American Court of Human Rights ruled that the promulgation of a law that extends the scope of the death penalty is a violation of the American Convention on Human Rights. Despite the authoritative ruling of the Court, by the end of December 1995 the Government of Peru had not taken any steps to have the Constitution amended.

Since May 1992, when the first of the new anti-terrorism laws came into effect, at least 5,000 prisoners have been detained, interrogated, and charged under judicial procedures which fall far short of international human rights standards. According to human rights defenders, at least 1,000 of these prisoners have been falsely accused of “terrorism”. Amnesty International believes these prisoners to be prisoners of conscience² or possible prisoners of conscience. Amnesty International also believes that the laws have so seriously curtailed the rights of the prisoner that they have provided judicial circumstances which facilitated torture.

The number of torture cases documented during the years of widespread “disappearances” and extrajudicial executions has increased since the new anti-terrorism laws came into force in 1992. The United Nations (UN) Committee against Torture concluded in November 1994, after examining Peru's anti-terrorism laws, that torture is widespread during the interrogation phase in terrorism-related cases, and that impunity is enjoyed by the perpetrators. The Committee was also of the opinion that the anti-terrorism legislation fell short of international fair trial standards and it was concerned that civilians were being tried by military courts.

Amnesty International has welcomed the government's statements that it will protect and promote human rights, and the measures it has taken to reduce “disappearances” and extrajudicial executions. However, the organization is dismayed by the government's lack of political will to develop and implement a fully coordinated strategy to end human rights violations in Peru. The failure to conduct effective investigations into human rights violations and bring those responsible to justice (now consolidated by the amnesty laws), the retention of wide-ranging anti-terrorism laws which deny prisoners the fundamental right to a fair trial, and the pattern of torture, are all symptomatic of that lack of political will.

1.LEGALIZING IMPUNITY: THE AMNESTY LAWS

“When I heard about the [amnesty] law I was filled with a sense of indignation and powerlessness. They weren't only mocking my brother but all the many others whose families and stories we have been learning about ... When a brother or son disappears, your life comes to a halt. From that moment on, it only serves to search for your loved ones. But this government has no mercy. It doesn't want to let us rest.”

These were the words of Gisella Ortiz upon learning that the military officials sentenced in February 1994 for killing her brother and eight other students and a professor from La Cantuta University in July 1992 had been released under Peru's amnesty law.

On 14 June 1995 the Peruvian Congress passed Law N°26,479, Article 1 of which grants a general amnesty to all those members of the security forces and civilians who were the subject of a complaint, investigation, indictment, trial or conviction, or who were serving prison sentences, for human rights violations committed between May 1980 and 15 June 1995.

Amnesty International has documented thousands of cases of “disappearance”, extrajudicial execution and torture perpetrated by members of the security forces since 1980. In only a handful of

these cases have those responsible been brought to justice. As of 16 June 1995, the day the amnesty law came into effect, all of these cases are effectively closed. Impunity, which nurtures the vicious circle of violence in which human rights violations go unpunished, has been institutionalized in Peru for more than a decade. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions observed in his report of his 1993 visit to Peru that there is compelling evidence that the “institutionalization of impunity in Peru [is one of] the main problems with regard to [a lack of respect for] the right to life”. In mid-1995 the Peruvian authorities took forward this “institutionalization of impunity” by ensuring that impunity entered into law.

President Fujimori has repeatedly pledged his government's respect for human rights. However, closing all investigations into human rights violations by the promulgation of the amnesty law does not reflect these pledges. The effective investigation of human rights abuses is essential if the full truth is to emerge. Victims, their relatives and the society at large all have a vital interest in knowing the truth about unresolved human rights violations. In addition, bringing the perpetrators to justice sends a clear message that violations of human rights will not be tolerated and that those who commit such acts will be held fully accountable.

The effect of the amnesty law is that thousands of victims of gross human rights violations and their relatives are unlikely ever to know the full truth. Their voices, and those of human rights defenders who have continuously urged the Peruvian authorities to investigate human rights violations and bring the perpetrators to justice, will go unheard.

The parents of “disappeared” student Ernesto Rafael Castillo Páez, and the human rights lawyer who worked on the case, Dr Augusto Zúñiga, are among the victims. Nobody has been brought to justice for the “disappearance” of 22-year-old Ernesto Castillo. According to witnesses, he was detained on 20 October 1990 by members of the Peruvian National Police in Lima, the capital, and has not been seen since. His sister, Monica Castillo, has had to flee Peru, after having been threatened with death on several occasions. Dr Zúñiga lost his left forearm when a letter bomb he received exploded. He also now lives in exile (see pages 13-14).

In January 1995, almost five years after Ernesto Castillo's “disappearance”, the Inter-American Commission on Human Rights submitted the case to the Inter-American Court of Human Rights, requesting that the Court order the Peruvian Government to “conduct the necessary investigations to identify, try and punish those responsible for the forced disappearance of Ernesto Castillo Páez; to locate and deliver his remains to his family and to pay full reparation, both material and emotional, to the victim's family”. At the time of writing, the end of December 1995, the Court had yet to consider the Commission's request.

The Peruvian authorities have been determined to ensure that the amnesty law remains in effect. On the day the law came into effect, the judge in charge of investigating the 1991 Barrios Altos massacre, in which 15 people were killed, courageously ruled that the amnesty law was inapplicable to this case. However, on 28 June 1995, before her ruling reached the High Court for ratification or veto, Congress passed yet another law which reinforced the first amnesty law. This second law, Law N°26,492, prohibits the judiciary from ruling on the legality or applicability of the amnesty law. Thus Congress effectively blocked the examining judge's ruling. This second law contravenes in spirit and in practice Principles 3 and 4 of the UN Basic Principles on the Independence of the Judiciary, adopted by the UN General Assembly in 1985, which state that: “The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law”, and that “There shall not be any inappropriate or unwarranted interference with the judicial process...”.

Amnesty International believes that, independent of its sweeping effects, the amnesty law was designed, in part, as a response to the ongoing investigation into the Barrios Altos massacre and the threat that those responsible would be identified. Before both laws were promulgated,

investigations into this massacre had gained a significant momentum. In January 1995 a non-commissioned officer stated publicly that members of the Grupo Colina were responsible for the Barrios Altos massacre. The officer also stated that the head of the Joint Command of the Armed Forces and the head of the National Intelligence Service had full knowledge of the killing. When judicial investigations into these allegations were opened before a civilian court in April 1995, the military courts filed a petition before the Supreme Court of Justice for jurisdiction over the case. However, before the Supreme Court of Justice ruled on the petition, the case was effectively closed by the passing of the amnesty law.

The Barrios Altos massacre is but one example of the widespread and gross human rights violations which Amnesty International has recorded since 1980 in Peru. Between January 1983 and June 1995 the organization documented at least 5,000 cases of “disappearance” and extrajudicial execution, including 20 massacres in which at least 500 people were killed by the security forces.

The most recent of these massacres took place in April 1994. According to the National Coordinating Committee for Human Rights (CNDDHH), an umbrella human rights directorate which brings together 47 national and independent human rights organizations, in April 1994 the Peruvian army extrajudicially executed 31 peasants in three separate incidents during a major offensive against a Shining Path stronghold on the left bank of the Alto Huallaga river, in Huánuco department. Investigations into these allegations were initiated by the military, Congress and a Public Ministry *ad hoc* prosecutor. The results, however, were never made public.

The April 1994 massacre, as well as the thousands of cases of “disappearance” and extrajudicial execution which occurred between 1980 and June 1995, will remain unresolved for as long as the amnesty laws are in force. In addition, those responsible for widespread and systematic torture throughout these years will go unpunished. Paulina Choquehuanca Farceque was 23 when she was detained by soldiers on 22 December 1993 in the city of Huancabamba, Piura department. She was forced under torture to confess to having links with the armed opposition. While in military custody, she claimed she was sexually abused and threatened with rape on various occasions. “I tell you, that [a military officer]... took off all my clothes... he forced me on top of a table. He began to touch me all over... `right now I am going to get you into bed...’ he said to me, `and you are not going to do anything about it. There’s no one here who can defend you!’” These were the words Paulina Choquehuanca used to describe her ordeal. One year after she had been detained, a High Court ordered her release because there was no case to answer. Those who abused her benefited from the amnesty law.

National and international human rights defenders as well as intergovernmental bodies have strongly condemned the amnesty law and the law which prevents any judicial challenge to it. Independent human rights organizations in Peru have started a countrywide campaign for a national referendum on the amnesty law. Such a referendum will only be possible if the human rights organizations collect the signatures of 1,200,000 Peruvian citizens. In addition, 20 members of Congress have drafted a bill which repeals both laws, and presented it to Congress for consideration. The bill also proposes the creation of a National Truth Commission, which should be given the task of investigating “serious violations of human rights and of humanitarian law committed or carried out during the course of insurgent or counter-insurgency actions after 18 May 1980, and of the circumstances surrounding them”. At the end of 1995, this bill had not been discussed by Congress.

On 1 August 1995 the UN Special Rapporteurs on extrajudicial, summary and arbitrary executions, on torture, and on the independence of judges and lawyers, as well as the Chairman of the UN Working Group on Enforced or Involuntary Disappearances, jointly wrote to the Government of Peru. In their communication the experts stated that both laws “favour impunity [and] are contrary to the spirit enshrined in human rights instruments, including the Vienna Declaration approved by the World Conference on Human Rights on 25 June 1993”. The experts also concluded that the second law, in prohibiting the judiciary from reviewing the amnesty law, “violates the basic

principles of the rule of law as well as contradicting the spirit of the ... [UN] Basic Principles on the Independence of the Judiciary”. The Chairman of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities also expressed his concern at the promulgation of the two laws. At the Sub-Commission's 47th Session, in August 1995, he endorsed the communication sent by the UN experts to the Government of Peru, and pledged to examine a draft resolution on the amnesty laws at the Sub-Commission's next session in August 1996.

Amnesty International believes that impunity negates the values of truth and justice and leads to further human rights violations. Peru's two amnesty laws, which have the effect of preventing the emergence of the truth and subsequent accountability before the law, are unacceptable. Victims of human rights violations and their relatives have the right to know the truth and to be given fair and adequate redress for the suffering to which they have been subjected.

2. THE ANTI-TERRORISM LAWS: A VIOLATION OF INTERNATIONAL STANDARDS

Unfair trials: prisoners of conscience and political prisoners

“I've never been able to understand the reason for my detention. At the DINCOTE³ 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.

Myriam Gálvez, a student and 30-year-old mother of two, 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. Myriam Gálvez remains in jail. She is held in Chorrillos High Security Prison for Women in Lima.

Myriam Gálvez is one of 84 prisoners of conscience whom Amnesty International has adopted since May 1992, when Peru's current anti-terrorism legislation came into effect. In 1992 the organization conducted an in-depth analysis of these laws and concluded that they facilitate the imprisonment of prisoners of conscience and that many of their features render all terrorism-related trials unfair. The legislation—a series of decree laws passed between May and November 1992—was implemented by President Fujimori's 1992 emergency government as part of a new counter-insurgency strategy. In their drive to demonstrate the effectiveness of the legislation, the authorities have become more concerned with securing convictions than with strictly following fair trial standards set out in international law. Some positive amendments have subsequently been made to the laws but they still fall short of international human rights standards.

Since 1992 at least 5,000 political prisoners have been arrested and convicted under anti-terrorism legislation. At least 1,000 of these prisoners are believed by independent human rights organizations to have been falsely accused of “terrorism”. All of them have been denied fair pre-trial and trial procedures enshrined in the International Covenant on Civil and Political Rights (ICCPR) and the American Convention on Human Rights, as well as in standards such as the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Basic Principles on the Independence of the Judiciary.⁴

Prisoner of conscience Julio Ismael Loa Albornoz, a practising Buddhist, was detained by the police in February 1993, after he was identified as a Shining Path activist by two MRTA members who wanted to benefit from Peru's anti-terrorism Repentance Law. The Repentance Law was one of the anti-terrorism laws which came into effect during 1992 and was repealed in November 1994. It benefited repentants: members of the armed opposition who supplied information leading to the

capture of other alleged members of the armed opposition. The benefits consisted of either immunity from prosecution and conviction or a reduction or remission of the repentant's sentence. Although the Repentance Law Regulations clearly stated that the police force "... has the responsibility of verifying the information supplied by the [repentant]...", Amnesty International has documented scores of cases where people were charged, convicted and sentenced solely on the basis of uncorroborated accusations made by members of the armed opposition seeking to benefit from the Repentance Law. The claim that many prisoners were being convicted on the basis of uncorroborated evidence provided by repentants was acknowledged in March 1994 by the then Special Prosecutor for terrorism-related crimes, Daniel Espichán Tumay. He stated that information supplied by "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 Julio Ismael Loa's case the two repentants who informed on him subsequently withdrew their accusations. In May 1993, after he and other witnesses had been examined before a judge, the prosecutor is reported to have ruled out: "that Julio Ismael Loa Albornoz has any links whatsoever to a terrorist organization... This is evidenced not only by the documentation available and the search conducted at his home, but also by having cross-examined the MRTA repentants and the defendant. For all of these reasons the criminal responsibility attributed to him has not been proven".

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.

Peru's anti-terrorism legislation provides for civilians accused of treason to have their cases heard by military tribunals. Amnesty International believes that this is yet another requirement which denies the defendant the fundamental right to a fair trial. Military tribunals in Peru are neither competent, impartial nor independent when hearing cases in which civilians are charged with criminal offences. Firstly, military judges lack competence because they are not known to receive formal and accredited legal training which allows them to hear civilian criminal cases. Secondly, in cases where the military try civilians for terrorism-related offences, the military lack impartiality because they inevitably become both accuser and judge. Thirdly, military judges lack independence because they are part of the military chain-of-command structure, and therefore remain subject to the orders of their superiors.

One of the most basic principles of justice, the principle that every defendant is innocent until proved guilty, was manifestly contravened by the military judge during the trial of Julio Ismael Loa Albornoz. The reason offered by the military judge for convicting and sentencing Julio Ismael Loa to 15 years in prison illustrates this. In considering the sentence he concluded: "... there is an element of doubt surrounding the participation of Julio Ismael Loa Albornoz in actions or events which add up to the crime of treason. This element of doubt ought to favour the state and the wider society and therefore it is preferable, before such uncertainty, to immediately impose a punishment which favours the wider society". On 30 June 1994 Julio Ismael Loa was sent to prison, despite the doubts that the military judge acknowledged in his ruling.

On 14 November 1994 the High Council of War of the Peruvian Air Force annulled Julio Ismael Loa's sentence and ordered a retrial. At the retrial the military tribunal absolved him of the crime of treason but ruled that his 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 absolved 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.

The release of Julio Ismael Loa and others who have been unjustly imprisoned could be expedited if the Peruvian authorities were to match statements about reviewing prisoners' cases with specific mechanisms for doing so. The Peruvian authorities have made such statements on numerous occasions. For instance, in May 1994 an Amnesty International delegation, headed by the Secretary General, met the then President of Congress, Jaime Yoshiyama Tanaka, who stated that Congress planned to establish a Commission of Notable Jurists which would review cases where there was compelling evidence that prisoners had been falsely accused of terrorism-related offences. Jaime Yoshiyama Tanaka also informed the organization that Article 118 (21) of Peru's 1993 Constitution provided for the President of the Republic to pardon such prisoners, once all judicial reviews had been completed.

In addition, on 12 August 1994 the Permanent Mission of Peru to the UN Office in Geneva presented a *Note verbale* to the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities at its 46th Session. In the part of the statement which refers to official investigations into allegations that prisoners accused of terrorism-related offences are arbitrarily detained, the *Note verbale* stated:

"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 case 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."

Amnesty International has no evidence of such a law having ever been passed or of the Commission having been established. In addition, by the end of 1995 President Fujimori had not exercised his constitutional power to pardon prisoners held on false "terrorism" charges.

In November 1994, Congressman Carlos Torres y Torres Lara presented a bill to Congress proposing to create a Special Consultative Commission for the Review of Cases of Terrorism and Treason. The bill was never debated. During 1995 at least four other bills were presented to Congress outlining mechanisms by which the cases of prisoners falsely accused of terrorism could be reviewed. By the end of 1995, none of these proposals had been enacted.

Although the Commission to review cases of prisoners falsely accused of terrorism-related offences has not yet been established, some prisoners of conscience and possible prisoners of conscience have been released by the courts, following national and international pressure. However, Amnesty International is seriously concerned that during 1995 the Supreme Court of Justice, in considering High Court rulings, frequently overturned decisions to release these prisoners. In such circumstances, the cases have to be heard again before a High Court which, under Peru's current anti-terrorism legislation, is compelled to order the redetention of the defendant. According to the CNDDHH, in October 1995 independent human rights organizations in Peru knew of "approximately 300 former prisoners who, having already gained their freedom after months or years in prison, know only too well the meaning of once again having to face the hell that is imprisonment".

In November 1995 Amnesty International urged the Peruvian authorities to release prisoner of conscience César Augusto Sosa Silupú immediately and unconditionally. In July 1993 he had been released after having spent almost a year in prison. However, in June 1995 the Supreme Court of Justice annulled the July 1993 decision of a High Court to absolve him on procedural grounds and

ordered a new trial. Following his redetention, César Sosa's father wrote to Amnesty International, stating: "What is serious and unacceptable in this case, is that not having questioned the substance of the proceedings, but only the formal procedures, [the Supreme Court of Justice] decided to annul the sentence ... and ordered a retrial, which resulted in the issuing of a redetention order against him". Amnesty International believes it is vital that the Peruvian authorities take the necessary steps to ensure that prisoners who have been acquitted of terrorism-related offences and released are not redetained.

Widespread torture

Peru's anti-terrorism legislation has also undermined safeguards designed to prevent torture and ill-treatment of detainees. Torture is a violation of fundamental human rights, condemned by the UN General Assembly as an offence to human dignity and prohibited under international law. In Peru, torture persists, although the government ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture) in July 1988. In a report submitted in May 1994 by the Government of Peru to the UN Committee against Torture, which monitors compliance by states parties to the Convention against Torture, the government acknowledged that "agents of the State still resort [to torture]".

Since May 1992 the vast majority of complaints of torture and ill-treatment laid before the authorities came from prisoners detained under the anti-terrorism legislation. Features of the anti-terrorism laws which have facilitated the torture and ill-treatment of detainees are: the suspension of the right to *habeas corpus* (in force between May 1992 and November 1993); the possibility of holding a terrorism-related suspect in "absolute" incommunicado detention for up to 10 days (in force between May 1992 and April 1995); and the prohibition of army and police personnel involved in the detention and interrogation of suspects from being cross-examined during trial proceedings (still in force at the end of December 1995).

María Elena Loayza Tamayo, a 38-year-old mother of two and lecturer at the San Martín de Porres University in Lima, was detained by the anti-terrorism branch of the police on 6 February 1993 on suspicion of having links with Shining Path. Her lawyer was not able to see her until 15 February, almost 10 days after her detention. In a letter to Amnesty International written in July 1995 in the Chorrillos High Security Prison for Women, María Elena Loayza recounts how she was raped while in police custody:

"... At midnight [on 7 February] I was taken bound and blindfolded out of the DINCOTE headquarters, I didn't know where they were taking me until we got to the beach. There were several of us. The men from the DINCOTE got me out of the car, stripped me, and took me away forcefully. We walked for quite a stretch ... they pushed my face down and violently raped me, bending back my legs and arms, I fainted ... They asked me a lot of questions, but as I didn't know about any of the names or things they were talking about, they kept submerging me in the water... [and] took me back to the sand and raped me again ..."

According to a report submitted to the UN Committee against Torture in 1994 by the CNDDHH, other women and men being held at the DINCOTE together with María Elena Loayza were also taken blindfold to the beach and tortured. Pedro Telmo Vega Valle, a prisoner of conscience detained in January 1993, was among them. In his testimony he describes how he was tortured:

"First they forced me to undress completely ... Once naked they made me lie on a blanket which the policemen had taken with them. I lay face down, then two of the policemen stood on my legs and a third sat on my buttocks ... they bent my arms back on three occasions for about 20 minutes or more, later ... they lifted me up and submerged me in the sea, they had me under the water for a long time ... I could feel the water getting into me through my ears."

The case of María Elena Loayza was addressed in the government's report to the UN Committee against Torture in May 1994. The government stated that, according to the head of the anti-terrorism branch of the police, "no human rights violations were committed [against María Elena Loayza] when the investigation [into her links with Shining Path] was carried out in the

presence of the representative of the Office of the Public Prosecutor, with the formalities and guarantees established by the law". This is one of many cases in which the Peruvian authorities failed to ensure that an independent, thorough and impartial investigation into allegations of torture, including rape, and ill-treatment was carried out and that those responsible were brought to justice.

In January 1995 the case of María Elena Loayza was submitted to the Inter-American Court of Human Rights by the Inter-American Commission on Human Rights. The Commission submitted the case to the Court because it considered that Peru had "violated Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 25 (Right to Judicial Protection) and therefore as a result, 1 (1) (Obligation to Respect Rights), all of the American Convention on Human Rights". The Commission requested that the "Court order Peru to pay full reparation to Ms. Loayza Tamayo for the damages suffered and that it pass a decree granting her immediate freedom". By the end of 1995 María Elena Loayza remained in prison. Her case has yet to be heard before the Inter-American Court of Human Rights.

Since April 1995, when the last set of amendments to the anti-terrorism laws was passed by Congress, those arrested on suspicion of involvement in a terrorism-related crime must have prompt access to a defence lawyer from the moment the police begin their investigations, even if the prisoner is held in *incommunicado* detention. The amendments also stipulate that during the suspect's declarations before the police, a representative of the Public Ministry and a defence lawyer must be present. Amnesty International welcomes these provisions as practical measures which go some way towards complying with international human rights standards, and also help in averting the torture and ill-treatment of prisoners. However, in Amnesty International's experience, legislative prohibition is not enough. Immediate practical steps such as promptly and effectively investigating all allegations of torture, and bringing to justice those responsible, are needed to confront torture and other cruel, inhuman or degrading treatment or punishment wherever they occur and to eradicate them totally.

3. TARGETING HUMAN RIGHTS DEFENDERS

On the morning of 16 November 1995 a funeral wreath in the shape of a cross was delivered to the Association for Human Rights (APRODEH), an independent human rights organization in Lima. A card attached to the wreath listed the names of 10 Peruvian human rights defenders. The card — in effect a death threat — read: "My most heartfelt condolences to the relatives. From the Colina family". A note included with the wreath added: "In memoriam — For those who lived and for the eternal cremation of their remains. With best regards from the Colina community". The "Colina family" is a cryptic reference to the Grupo Colina, the "death squad" said to be linked to the SIN.

Since President Fujimori came to power in July 1990 several prominent cases of human rights violations have been attributed to the *Grupo Colina*. These include the November 1991 Barrios Altos massacre, in which 15 people were gunned down; the "disappearance" of nine peasants from Santa province, Ancash department, in May 1992; the "disappearance" of journalist Pedro Yauri Bustamante in June 1992; the "disappearance" during 1992 of at least 26 students from the University of Central Peru in the city of Huancayo, 22 of whom were later found dead; and the abduction and killing of nine students and a professor from La Cantuta University in July 1992. In February 1994 nine military officers were sentenced by a military court to between one and 20 years' imprisonment for their part in the La Cantuta University massacre but were released in the wake of the June 1995 amnesty law.

The human rights defenders named in the death threat have been at the centre of attempts to uncover the truth behind these gross human rights violations. They are Susana Villarán, Francisco Soberón, and Ernesto de la Jara, human rights activists attached to the CNDDHH; Gisella Ortiz and Raida Cóndor, relatives of two victims of the La Cantuta massacre;

Heriberto Benítez, a lawyer who acted on the La Cantuta case; Javier Diez Canseco, Henry Pease and Gustavo Mohme, opposition congressmen who investigated the Barrios Altos and La Cantuta massacres and other prominent human rights cases; and dissident army general Rodolfo Robles, who in May 1993 publicly held the *Grupo Colina* responsible for both these massacres and named high-ranking army personnel and one civilian as being implicated. Many of these activists have been instrumental in launching a civic movement designed to repeal the amnesty law.

The death threat arrived in the wake of a bill submitted to Congress on 13 November, signed by Javier Diez Canseco and 20 other opposition members of parliament, which seeks to repeal those articles of the amnesty law granting a pardon to human rights violators and the law prohibiting judges from deciding on the legality or applicability of the amnesty law. The bill also seeks to create a Truth Commission, the purpose of which would be to investigate the violation of human rights and of humanitarian law since May 1980 by the security forces and the armed opposition.

The banner of human rights protection in Peru has been carried by a wide range of people. Some work for independent human rights organizations, or as journalists or lawyers; others, in their personal capacity, campaign in the name of loved ones who have “disappeared”, or who have been detained, tortured or killed by the security forces. Still others, in their official capacity as members of parliament, state prosecutors, judges, or dissident members of the security forces, seek to establish the truth about specific abuses. These human rights defenders represent the unspoken wishes of the victims and their relatives; they stand for the imperative need to build a society in which the unrestricted respect for human rights will become a daily reality.

Some pay a heavy price for their commitment. In February 1990 Ángel Escobar Jurado, secretary of the Human Rights Commission in the city of Huancavelica, was seen being conducted through the streets by five men dressed in civilian clothing. An acquaintance saw him being hustled across a bridge which leads to a military barracks. Ángel Escobar saw the acquaintance and was able to shout: “They're taking me away! They're taking me away!”. One of his abductors was subsequently seen in Huancavelica in the company of uniformed army personnel.

Six years later Ángel Escobar is still missing. The identify of his abductors and his fate may never be known. His wife, and his young daughter who regularly worked at his side, harboured the hope that he would reappear. But both must have reacted to Peru's amnesty law in the same way as the relatives of countless other victims of “disappearance”, extrajudicial execution and torture in Peru: with both fury and despair.

Four months later, in June 1990, Guadalupe Ccalloccunto, mother of four children and active in an organization assisting the families of the “disappeared”, was taken from her home in Ayacucho city in the early hours of the morning. The organization's offices were closed after staff received death threats. The authorities have denied detaining Guadalupe Ccalloccunto. Her whereabouts remain unknown.

On 15 March 1991 Dr Augusto Zúñiga Paz, a human rights lawyer working on the “disappearance” of Ernesto Castillo Páez, received in his office an envelope reportedly bearing an official government stamp. On opening the letter the device exploded and severed his left forearm.

This attempt on his life did not come as any surprise to Dr Zúñiga. Six weeks earlier, while attending a hearing on the Castillo Páez case before Criminal Court No. 2 of the Supreme Court of Justice, Dr Zúñiga informed the president of the Criminal Court of threats to his life while working on the case. Against a longstanding background of work for other victims of human rights violations, Dr Zúñiga told the president of the Criminal Court: “ ... this is the first time, sir, that I and my family receive a direct threat ... Sir, if something happens to my

son, if something happens to my wife, if something happens to me, I hold the Minister of the Interior responsible ... In defending the life and liberty of my clients, I have the responsibility to defend mine and that of my family... I cannot remain silent because to do so is to collude [with those responsible for the threats]”. The president of the Criminal Court responded by stating: “The Court has agreed to direct a communication to the Ministry of the Interior requesting that the necessary guarantees be accorded [to you and your family]”. However, those “guarantees”, which may have helped to avert the attack suffered by Dr Zúñiga, never materialized.

Intimidation and death threats have been part of the daily lives of human rights defenders in Peru during the past 16 years. They, and the victims and their relatives who file complaints about abuses by the security forces, live in a perennial climate of fear. This climate of fear has been particularly felt by human rights defenders as a result of President Fujimori and other authorities repeatedly accusing them of being accomplices of the armed opposition.

The climate of fear engendered by an official hostility towards human rights defenders increased after the passing of the amnesty laws in June 1995. A veritable wave of death threats was aimed at human rights activists publicly repudiating those laws. For instance, Dr Antonia Saquicuray, the lower court judge investigating the 1991 Barrios Altos massacre, received several anonymous death threats following the court ruling in which she declared the amnesty law to be unconstitutional and in violation of international human rights standards. The ruling was issued on 16 June 1995, the day the amnesty law came into effect. It was this ruling that prompted parliamentary supporters of the government to immediately rush through Congress the law prohibiting the judiciary from deciding on the legality and applicability of the amnesty law.

The fear created by the passing of the amnesty law is reflected by the relatives of the victims of the Barrios Altos and La Cantuta massacres. In statements made to journalists these relatives expressed their clear opposition to the amnesty law. They also expressed particular concern about the release of those members of the army, said to be part of the *Grupo Colina*, who were sentenced to terms of imprisonment for their part in the La Cantuta University massacre. Raida Córdor, mother of one of the murdered La Cantuta University students, poignantly summed up that fear:

“The announcement of the amnesty law for my son's murderers made me feel that all we gained had come crashing down round our heads ... Those people took away my first born ... they took him at midnight, and hid him away from me without any mercy. I had to look in the ground to find him. The nights were eternal. I used to lie awake and imagine that he would come home and silently go to bed so as not to wake me ... When I finally became convinced that he was dead I lost all fear... When the case was brought to light and the press identified his murderers, I became stronger. [For months on end] the relatives came together and knocked on every door looking for anyone who would listen to our story... How could the government now pardon my son's killers in my name? [On the day the amnesty law came into force] two men came to my house. I wasn't at home. ... My daughters ... say they were two young men with short hair who looked like plain clothes policemen. It looks like it's beginning all over again”.

Dr Tito Guido Gallegos Gallegos is a human rights lawyer attached to the Human Rights Office of the Parish of Juli, a church-based human rights organization which works for the mostly peasant population in and around the Andean town of Juli in Puno department. After the amnesty law was passed in June 1995, and on several occasions during July and August, Dr Gallegos became the target of death threats. On 23 June he received a letter threatening him with death “for promoting the view that the amnesty law is not applicable”. The letter echoed sentiments repeatedly expressed by the authorities in their efforts to discredit Peruvian human rights defenders by linking their work to the violence unleashed by Shining Path. The anonymous letter read:

“... your behaviour has demonstrated your clear commitment with subversion. We know well of your connection with communism, a connection which you have cleverly employed under the cover of a communist Church, as well as human rights organizations which are at the same time fronts for Shining Path ... The cases you have defended ... have been taken up by you as a result of the `class hate' only a Shining Path activist could hold towards the Armed Forces, backed by the... pressure you exerted on the National Coordinating Committee for Human Rights, Americas Watch, Amnesty International and other organizations, the puppets of international communism”.

The letter ended: “Long live the Patriotic Military Front! Long live our glorious and heroic Armed Forces! The amnesty law is a duty and an expression of gratitude by civilized society”.

Despite Peruvian and international human rights organizations appealing to the authorities to ensure that Dr Tito Guido Gallegos be granted the necessary protection, he subsequently received several anonymous telephone calls warning him to stop his work. The probable source of the threats became apparent when, on 23 August 1995, a uniformed non-commissioned officer entered the office of the Bishop of Juli, identified himself by name, and asked for the whereabouts of Dr Gallegos. The officer, who indicated he was acting on orders from his superiors, left the office threatening Dr Gallegos and telling staff to inform him that he should take care of himself.

In the face of Peru's bloody 16-year internal war, in which thousands of human rights abuses have been committed by government agents and the armed opposition, and in spite of serious threats to their personal security, the above human rights defenders have been at the forefront of campaigns to ensure that peace and justice return to Peru. But such courage cannot be measured by quantifying the number of occasions in which human rights defenders have been threatened, attacked, “disappeared” or killed. Each and every case taken up by human rights defenders gives hope to the victims and their loved ones. In short, the work of human rights defenders, be they professional workers or the relatives of victims who actively seek to establish the truth, proclaims life and human dignity. Both they and their right to carry out their work must be respected.

4. ABUSES BY THE ARMED OPPOSITION

The protracted and systematic violation of human rights during the past 16 years occurs 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.

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 very Central Directorate 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 massacres, 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 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 shot-guns 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”.

During the second half of February 1995 Amnesty International received reports of another massacre by Shining 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 Shining 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 Shining 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, Matario 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.

Senderistas are also frequently reported to torture their captives. On 14 November 1995 *La República*, a daily newspaper, carried an article in which members of a peasant community in Huashao, province of Huaraz, Ancash department, described how eight of them had been tortured by nine *senderistas* in an effort to extract information from them as to the whereabouts of Manuel

Mendoza Ramos, the leader of 180 civil defence patrols covering 21 provinces in the region of Chavín.

Shining Path has clearly stated its opposition to the concept of human rights in a 71-page internal document which analysed the government's counter-insurgency strategy as developed under President Fujimori's administration. The document, entitled, "Above the two hills: counter-insurgency war and its allies", was reportedly written almost entirely by Abimael Guzmán in 1991. On human rights, the document stated:

"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] ... [Shining Path's] position 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."

With the implementation of President Fujimori's counter-insurgency strategy and the arrest of the leadership of Shining Path and 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 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".

By the end of 1995 those members of Shining Path supporting the position that armed conflict should continue, and who would appear to be aligned with Red Path, continued 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.

Amnesty International has repeatedly and unequivocally condemned the grave human rights abuses by Shining Path and the MRTA. Amnesty International'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 believes that the type of abuses committed by Shining Path and the MRTA can never justify the violation by the authorities of fundamental human rights. In the words of the UN 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] ...".

Amnesty International urges the leaders of Shining Path, Red Path and MRTA to fully respect and abide by the humanitarian standards enshrined in Common Article 3, paragraph 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".

5. AMNESTY INTERNATIONAL'S RECOMMENDATIONS

International standards and national law require the Peruvian Government to respect the fundamental human rights of every person. These rights, which are set out in the Constitution of

Peru and in the regional and international human rights treaties to which Peru is a party, include the right to life, physical integrity and a prompt and fair trial. It is essential that the Peruvian Government restore these rights in order to end the systematic pattern of impunity, torture and unfair trials which persists in Peru. All prisoners of conscience should be released immediately and unconditionally.

Amnesty International calls on the Government of Peru to take the political, legal and administrative steps necessary for the prevention of human rights violations. The organization also calls on the authorities to repeal those articles of the amnesty laws of June 1995 which benefit human rights violators, and to ensure that all unresolved complaints about human rights violations filed before them are promptly and effectively investigated. Those found responsible for human rights violations should be brought to justice, and the victims and their families should be adequately compensated.

The following recommendations are based on principles contained in international and regional human rights standards adopted by the UN and the Organization of American States. These standards are listed in Appendix 3.

Amnesty International urges the Government of Peru to:

I. Release all prisoners of conscience immediately and unconditionally

II. Repeal immediately those articles of the amnesty laws promulgated in June 1995 which benefit human rights violators

III. Ensure prompt and fair trials for all political prisoners

Review promptly and comprehensively the present anti-terrorism legislation 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.

Take the necessary steps to ensure that those prisoners falsely accused of terrorism-related offences who have already been acquitted and released are not redetained merely because of procedural or administrative errors during their trials.

IV. Abolish the death penalty for all offences

V. Protect human rights defenders by taking all necessary steps to ensure they can carry out their work without fear of attacks and reprisals

Ensure prompt, thorough and impartial investigations into any reports of intimidation or harassment of human rights defenders. The findings should be made public and those found responsible be brought to justice.

VI. Prevent torture, 'disappearances' and extrajudicial executions

The President, as Commander-in-Chief of the Armed Forces and of the Police Forces, should ensure that the government's policy "not to have one single disappearance more and that torture and extrajudicial execution be definitively eliminated", first made public in September 1991 in an official document entitled "Presidential Directive on the Respect for Human Rights", is confirmed and implemented. The effectiveness of the measures currently in place to eliminate human rights violations should be reviewed, particularly in view of compelling evidence that torture remains endemic, and the fact that occasional "disappearances" and extrajudicial executions continue to be reported.

The government should ensure strict control, including a clear chain-of-command, over all officials responsible for arrests, detention or imprisonment. Instructions should indicate who is responsible for supervising arrest, detention and interrogation procedures and for disciplining personnel who violate these procedures.

The ranking officers of the security forces should rigorously ensure the protection of human rights in those areas for which they have operational responsibility, including in the emergency zones under their control.

All members of the security forces, and their civilian auxiliaries, should be instructed not to obey orders which will result in human rights violations, and be reminded that obedience to

superior orders may not be considered a defence against accusations of human rights violations.

Specific measures should be taken to ensure that:

all prisoners are told of their rights, including the right to lodge complaints about their treatment;

all detainees are brought promptly before a judge, and given access to lawyers, relatives and doctors without delay;

detainees are only held in recognized detention centres;

international humanitarian organizations which monitor the conditions of detainees continue to be granted unrestricted access to all places where detainees are held;

up-to-date local and central registers of detention continue to be maintained and made available on request to relatives, Public Ministry officials, ombudsmen, judges, lawyers and representatives of human rights organizations;

the authorities reveal without delay where detainees are held;

counter-insurgency patrols immediately transmit to their bases the names of people detained, and of people injured or killed in armed confrontations and that this information is forwarded from military bases to the relevant political-military command and then to the civilian authorities;

detainees are released before a public prosecutor, ombudsman or a judge, in order to verify that the release occurred and the state of health of the detainees on release;

the authorities should make it clear that statements obtained from detainees as a result of torture are not admissible in legal proceedings.

VII. Prevent rape and sexual abuse

The government should explicitly prohibit and take measures to prevent rape and sexual abuse by members of the security forces and their civilian auxiliaries. The authorities should send a clear message that any law enforcement agent responsible for rape and sexual abuse, or for encouraging or condoning such acts, should be brought to justice.

The government should conduct prompt, thorough and impartial investigations into all reports of rape and sexual abuse. Any law-enforcement agent responsible for such acts, or for encouraging or condoning them, should be brought to justice.

Female guards should be present during the interrogation of female detainees and prisoners, and should be solely responsible for carrying out any body searches of female detainees and prisoners to reduce the risk of rape and other sexual abuses. There should be no contact between male guards and female detainees and prisoners without the presence of a female guard.

Female detainees and prisoners should be held separately from male detainees and prisoners.

A medical examination, by a female doctor whenever possible, should be provided immediately for any woman in custody who alleges she has been raped. This is a crucial measure in obtaining evidence for legal prosecution.

Victims of rape and sexual abuse should be entitled to fair and adequate compensation and appropriate medical care.

VIII. Investigate human rights violations

All reports of human rights violations should be promptly investigated by impartial and independent bodies, wherever there is reasonable ground to believe that such acts have been committed. Special prosecutors should be appointed by the Public Ministry, with powers to compel members of the security forces to submit evidence. The Ombudsman's Office should promptly be made fully operational.

Victims of human rights violations and their relatives should have the right to make formal complaints and to have their cases investigated promptly, impartially and independently.

The Public Ministry and the Office of the Ombudsman should receive the political support and the resources needed to carry out their role in the protection of human rights.

Officials investigating complaints about human rights violations should have adequate financial and technical resources and the authority to obtain all information necessary to the inquiry, and in particular should have:

the authority and the resources necessary to make immediate on-site visits to detention centres and military bases;

the authority to compel the attendance of witnesses and production of relevant documents.

The government should ensure that all necessary measures are taken to protect victims and witnesses who wish to give evidence of human rights violations, as well as journalists and human rights monitors investigating such abuses.

Independent forensic investigations into cases of extrajudicial execution and torture should be carried out promptly and thoroughly in all cases.

Forensic investigations, including autopsies, should conform to minimum international standards, including the UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

The security forces should be explicitly ordered to:

identify before public prosecutors, ombudsmen and judges those officers cited by pseudonym in reports of human rights violations;

keep records of the identities of police, military and civil defence personnel deployed on operational activities, including counter-insurgency patrols, and make these available for inspection by investigators;

record the identities of personnel who participated in arrest, detention and any interrogation of detainees;

make available to investigators the records of police, military and civil defence patrols.

Obstruction of investigations into human rights violations should be made a criminal offence, to be prosecuted in the civilian courts.

Written reports should be made promptly on the methods and findings of all investigations into human rights violations. These reports should be made public.

IX. Bring the perpetrators of human rights violations to justice

All members of the security forces against whom there is evidence that they planned, ordered, committed, tolerated or concealed human rights violations, should be brought to justice.

Jurisdiction over cases of human rights violations committed by members of the security forces and civil defence patrols under military command should be removed from the military courts and transferred to the civilian courts.

Individual officers accused of involvement in human rights violations should be suspended from active service during investigation and judicial proceedings.

X. 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 ombudsmen 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.

XI. Compensate the victims

All victims of torture should receive medical treatment and rehabilitation where necessary, as well as financial compensation.

A relief program should be initiated for families and dependents of those who have “disappeared”.

Families and dependants of victims of extrajudicial execution should receive compensation.

Victims of arbitrary detention should receive compensation.

XII. Promote human rights awareness

The government should ensure that all members of the police, armed forces and official civil defence patrols 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 law enforcement agents who exercise powers of detention and arrest. This code should conform to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

Human rights education should be included in the curriculum at every stage of the education system.

There should be a broad program aimed at promoting human rights awareness among all sectors of society, particularly among those sectors most vulnerable to abuses of authority.

XIII. Ratify and implement international treaties for the protection of human rights

Ratify the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Inter-American Convention on the Forced Disappearance of Persons.

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 N°25,475 and N°25,659 are the basic laws which regulate the procedure by which the police and courts handle terrorism-related cases.

Decree Law N° 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 N°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 N°25,475, but takes into account a set of aggravating circumstances. This decree makes provision for civilians accused of treason to have their cases heard under the jurisdiction of military tribunals.

Other decrees issued during the emergency government added to or modified the procedures outlined in these two decrees.

Congress has approved amendments to the legislation on three separate occasions, once in November 1993, once in November 1994 and again in April 1995. Amnesty International believes that prior to the first set of amendments passed 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;

- holding the accused in detention for inordinately lengthy periods while awaiting trial;

- the limitations imposed on examining judges, including that such judges have no choice other 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 peremptory 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;

holding trials in secret, both in civilian and military courts;

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 N°26,447, came into effect on 22 April 1995, with the exception of those contained in Article 1, which are currently envisaged as coming into effect on 15 October 1996.⁵

Article 2 of Law N°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 the suspect's declarations before the police, a representative of the Public Ministry and a defence lawyer must be present.

Article 3 of Law N°26,447 repealed anti-terrorism Decree Law N°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.

Despite the positive amendments to Peru's anti-terrorism criminal laws outlined above, 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 peremptory 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 be completed all 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

Amnesty International's reports on human rights violations in Peru

Peru: Human rights in a climate of terror (AI Index: AMR 46/56/91), November 1991

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 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 46/19/95), November 1995

APPENDIX 3

International standards for the protection of human rights

United Nations standards

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights (ratified by Peru in 1978)

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Peru in 1988)

Convention on the Elimination of All Forms of Discrimination against Women (ratified by Peru in 1993)

Declaration on the Elimination of Violence against Women

Basic Principles on the Independence of the Judiciary

Basic Principles of the Use of Force and Firearms by Law Enforcement Officials

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

Declaration on the Protection of All Persons from Enforced Disappearance

Standard Minimum Rules for the Treatment of Prisoners

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

Code of Conduct for Law Enforcement Officials
 Organization of American States standards
 American Convention on Human Rights (ratified by Peru in 1978)
 Inter-American Convention on the Forced Disappearance of Persons
 Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women

ENDNOTES

¹ *Diario La República*, 10 November 1991

² Amnesty International defines prisoners of conscience as those persons detained or otherwise physically restricted by reason of their political, religious or other conscientiously held beliefs, or by reason of their ethnic origin, sex, colour, language, national or social origin, economic status, birth or other status, provided they have not used or advocated violence. This includes those prisoners which Amnesty International believes have been falsely accused of criminal offences which are politically related, and for which there is no credible evidence to link them to the political beliefs and actions with which they have been imputed.

³ DINCOTE stands for the *Dirección Nacional Contra el Terrorismo*, National Directorate Against Terrorism, Peru's special anti-terrorism police force.

⁴ See Appendix 1 for a list of the features in Peru's anti-terrorism legislation since 1992 which Amnesty International considers have rendered all terrorism-related trials unfair. See also the following Amnesty International reports for 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.

⁵ Article 1 of Law N°26,447 repeals provisions contained in Peru's anti-terrorism legislation which allowed the identity of judges, prosecutors and other court officials in High Courts and the Supreme Court of Justice to be concealed. Instead, Article 1 makes provision for trial and appeal procedures in terrorism-related cases to be subjected to the normal procedural and administrative rules governing all criminal cases heard before civilian courts. In effect this means that Article 1 makes provision for judges, state prosecutors and other court officials hearing terrorism-related cases before civilian High Courts and the Supreme Court of Justice, to be identified by their proper names, rather than by secret codes, and for court hearings to be public. The article does not affect procedures in cases heard before military courts. Military tribunals, by definition, are held in closed courts.

Glossary

APRODEH *Asociación pro Derechos Humanos*, Association for Human Rights

CNDDHH *Coordinadora Nacional de Derechos Humanos*, National Coordinating Committee for Human Rights

ICCPR International Covenant on Civil and Political Rights

MRTA *Movimiento Revolucionario Túpac Amaru*, Túpac Amaru Revolutionary Movement

SIN *Servicio de Inteligencia Nacional*, National Intelligence Service

UN United Nations

KEYWORDS: IMPUNITY1 / AMNESTIES FOR VIOLATORS1 / EMERGENCY LEGISLATION1 / EXTRAJUDICIAL EXECUTION1 / DISAPPEARANCES1 / HUMAN RIGHTS ACTIVISTS1 / HARASSMENT / TORTURE/ILL-TREATMENT / SEXUAL ASSAULT / TRIALS / MILITARY TRIBUNALS / INDEPENDENCE OF JUDICIARY / INCOMMUNICADO DETENTION / BOMB ATTACKS / PRISONERS OF CONSCIENCE / WOMEN / STUDENTS / ACADEMICS / RELIGIOUS GROUPS - BUDDHIST / LAWYERS / JUDGES / PEASANTS / DRIVERS / CIVIL DEFENCE AS VICTIMS / MILITARY / NON-GOVERNMENTAL ENTITIES / ARMED CONFLICT / RETRIALS / PRISONERS' TESTIMONIES /