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Discrimination, Detention, and Deportation: Immigration & Refugees

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Human Rights Watch World Report 1998

PERU

Human Rights Developments

During 1997 a series of attacks on the autonomy of bodies established to protect constitutional rights, on the independence of the judiciary, and on freedom of the press revealed the authoritarian style of the government of President Alberto Fujimori with increasing clarity. In May, the pro-Fujimori majority in Congress crippled the recently elected Constitutional Court by dismissing three of its members, an action which prompted the court's president to resign in protest. The congressional action was in response to the court's issuing of a ruling challenging Fujimori's constitutional right to stand for election for a third consecutive term. The government arbitrarily deprived an Israeli-born media owner of his Peruvian nationality and expropriated his shares in his television station after he broadcast an interview with an army intelligence agent who had been detained and tortured by her superior officers. Peru's shadowy National Intelligence Service (Servicio Nacional de Inteligencia, SIN), whose de facto head Vladimiro Montesinos is a close adviser of the president, was widely suspected of ordering a series of violent attacks on journalists and prominent politicians, as well as widespread surveillance and illegal phone tapping of public personalities such as government ministers and a former presidential candidate. Evidence emerged that members of the La Colina army death squad, whose members were released from prison under an amnesty law passed in June 1995, were still regular visitors at army headquarters in Lima.

Peru's anti-terrorist police continued to engage in torture, and grave abuses were attributed to soldiers stationed in zones where armed anti-government groups operated. No advances were made in passing badly needed legislation to prevent and punish torture, although several bills had been before Congress since March 1996. Conditions in special prisons reserved for those accused or convicted of terrorist crimes continued to violate international norms. Hundreds of innocent prisoners who had fallen foul of the so-called "faceless" anti-terrorist courts, which violated rights to a defense and a fair trial, remained in prison. By November 1, President Fujimori had released 227 innocent prisoners convicted or under trial by these courts after the special Ad-hoc Commission appointed in 1996 to review such cases recommended their pardon. Finally responding to intense criticism of the courts by domestic and international human rights organizations, the government did not renew their mandate when it expired in mid-October; henceforward those accused of terrorism would be tried by ordinary judges. Those accused of the more serious crime of treason would continue to be tried by military courts, but the identity of the judges would cease to be secret.

Armed opposition groups, the Shining Path (Sendero Luminoso) and the Tpac Amaru Revolutionary Movement (Movimiento Revolucionario Tpac Amaru, MRTA), continued to violate international humanitarian law, although the scale of abuses by both organizations declined with the level of armed activity. The MRTA's spectacular seizure on December 17, 1996, of hundreds of hostages at the residence of the Japanese Ambassador in Lima flagrantly violated the prohibition on hostage-taking contained in the Geneva Conventions. After releasing hundreds of the hostages, the MRTA continued to hold seventy-two among them government ministers, judges, and diplomats for more than four months, until the army and police stormed the residence, securing their release on April 22, 1997.

Two members of the security forces and a Supreme Court judge, Carlos Giusti Acua, died during the rescue. Soldiers and police killed all fourteen guerrillas found in the building. The government refused to investigate the circumstances of the hostage-takers' deaths to determine whether they were produced by a legitimate use of force or whether some may have been killed after their surrender or capture.

No significant new activity by the MRTA was reported during the year. Activity by the Shining Path appeared to decrease during the hostage crisis, but the organization remained active, particularly in Lima and in remote parts of the departments of San Martín, Ucayali, Cusco, Ayacucho, and Hunuco. There was no sign of any change in its tactics, which continued to violate basic principles of international humanitarian law. According to Peruvian human rights groups, between January and August the organization selectively killed eighty-seven people, of whom sixty-nine were civilians. On May 15, the seventeenth anniversary of the beginning of its armed campaign, the Shining Path exploded a car bomb outside a police station in the working-class area of Ate Vitarte, in Lima, wounding several people.

For the first time in many years, Peruvian human rights organizations had not recorded any cases of extrajudicial execution or "disappearance" by the armed forces or the police by the end of October. Government forces, however, continued to resort to torture when interrogating guerrilla suspects. One month before the end of the hostage crisis, the 31st Division of the Peruvian Army detained more than forty peasants in Alto Yurinaki and other remote villages of the province of Chanchamayo, Junín department, where they believed an MRTA guerrilla column had originated. The arrests followed the television screening of a newsclip which showed youths wearing MRTA bandanas training in a jungle camp in the area. An army communiqué accused the peasants, identified in the press by their names, mugshots, and supposed aliases, of belonging to an MRTA column which had planned to attack the Villa Rica army counterinsurgency base with the help of conscripts who had infiltrated the base. Between February 24 and March 12 the supposed infiltrators, who had themselves been detained and tortured, accompanied soldiers round the area identifying villagers, who were then arrested, tortured, and forced to identify others.

During the Alto Yurinaki operation, seventeen-year-old Emerson Wistrecher Cnepa was detained at about 4:00 p.m. on March 9. He was beaten, hung by the feet, kicked in the stomach and plunged head first into a tank full of water laced with detergent. This treatment went on for several days, while soldiers forced him to accompany them to look for a supposed weapons cache. The weapons allegedly found were previously buried by the army in a hole in the ground, according to local residents. On March 21 a Channel 15 television interview showed Wistrecher after his release, still with ugly wounds on his wrists caused by the electric cables used to tie them. The footage also showed the back room of a small grocery store where the soldiers had tortured Wistrecher, complete with a car battery used for giving electric shocks and a receptacle still containing water and detergent. The antiterrorist police released most of the detainees after finding no evidence to charge them, despite the advance publicity given by the army to their presumed guilt. In a television interview on March 30, President Fujimori promised to investigate the allegations of torture, but to our knowledge, the Ministry of Defense did not carry out any investigation, nor were those responsible for the torture detained or charged.

Army intelligence agents also tortured one of their own subordinates whom they had arrested on suspicion of leaking information to the media about secret army plans to intimidate members of the opposition press. On April 6, "Contrapunto," a Channel 2 television program, featured a shocking interview with thirty-six-year-old Leonor La Rosa Bustamante, which had been secretly filmed at her bedside in Lima's military hospital. The camera showed severe burns and scarring on the fingernails of her right hand, and she could walk only with assistance. La Rosa, herself an active agent of the Army Intelligence Service (Servicio de Inteligencia del Ejército, SIE, a department of the SIN), said that the SIE held her for five days in January in the basement of the General Command (Comandancia General) of the Peruvian Army, known as the "Little Pentagon" (Pentagonito), and SIE agents beat her and tortured her with electricity. La Rosa was admitted to the Military Hospital with head injuries. On her discharge she was given fifteen days convalescence leave. When she returned to work on February 11, her superior officers again arrested her and took her back to the basement, where they interrogated her under torture for a further week. On February 19, after hemorrhaging as a result of the beatings, she was re-admitted to the military hospital, where she suffered respiratory failure. She told Channel 2 reporters and congressmen who visited her bedside that her interrogators suspected her of leaking information to the press on secret army intelligence plans to blow up a television station and intimidate well-known journalists and human rights defenders, including television personality Csar Hildebrandt and lawyer Heriberto Bentez.

On May 9 a military court convicted the head of the SIE, Carlos Snchez Noriega, and three of his subordinates for the torture of La Rosa, and sentenced them to eight years imprisonment. The proceedings were conducted according to summary military procedures and held in secret, making it impossible for outsiders to assess the evidence or whether higher officials may have ordered or acquiesced in the torture. In August the Supreme Court resolved in favor of the military a dispute over jurisdiction with the civilian court that was also investigating the case, and which had issued an order for an inspection of the SIE's detention facilities. The ruling preempted the inspection and the possibility of public access to the investigation.

The link between the targets of the SIE's intimidation campaign appeared to be their role in denouncing army human rights abuses. Bentez, a prominent human rights lawyer, represented former Gen. Rodolfo Robles Espinoza, who was forced into early retirement when he publicly revealed the involvement of an army death squad, known as the Colina Group, in extrajudicial executions and "disappearances" in 1992. The members of the death squad were jailed for human rights crimes but released under a government amnesty promulgated in June 1995. Since his return from exile in Argentina, Robles had received repeated anonymous threats. On November 26, 1996 army intelligence agents beat and abducted him in retaliation for his denouncing the Colina Group's role in a bomb attack the previous October against the Puno transmitter of Global Television, which had been critical of the government. The army released Robles in early December after domestic and international protest forced the government to approve an amnesty for him. However, harassment of Robles and his family continued. On March 26, 1997, four unidentified assailants tried to abduct Robles's son, Jaime Robles Montoya, who was driving his father's car at the time. Leonor La Rosa testified that she had seen members of the Colina Group frequenting army headquarters, providing more evidence that the main beneficiaries of the 1995 amnesty were still on active service.

Included in Channel 2's feature on Leonor La Rosa was an investigation into the "disappearance" of Mariella Lucy Barreto Riofano, also a SIE agent and a friend of La Rosa. The program revealed that a dismembered corpse found in plastic bags on a roadside north of Lima on March 23 belonged to Barreto, and that she had been the mistress of Capt. Martn Santiago Rivas, former head of the Colina Group. The newspaper *La Repblica* had reported in February that Barreto was also under investigation by the SIE in relation to leaked information about intelligence activities. At this writing those responsible for her murder remain at large.

Other attacks against journalists and opposition politicians were also attributed by human rights groups to the SIN, although the government insisted they were the work of ordinary criminals. On March 19 in Lima, unidentified gunmen kidnapped and beat three occupants of a jeep owned by Javier Diez Canseco, a congressman of the United Left (Izquierda Unida), who is known in Peru for his campaigning on human rights issues and the object of death threats and attacks in the past. In the vehicle, apart from the driver, were Patricia Valdez, an Argentine human rights advocate, and Diez Canseco's bodyguard, who was shot in the leg. The three were beaten and threatened and eventually dropped off; the car was found later a burned-out wreck by the roadside. On April 1, four heavily armed men abducted Blanca Rosales, general editor of *La Repblica* shortly after midnight close to the paper's offices in central Lima while she was driving home with a colleague, Juan de la Puente. The men beat and threatened Rosales but, like the occupants of Diez Canseco's jeep, later allowed her to escape. *La Rpblica*, a left-of-center opposition newspaper, has campaigned for years against the SIN and the Colina Group. In June, Csar Hildebrandt, presenter of the television program *En Persona*, demanded that the Interior Ministry guarantee his family's safety after the program aired revelations by La Rosa about a plan in December 1996 by the SIE to kill him; he also received a telephone call threatening the safety of his son. Within days after the revelations became public, an *En Persona* film crew was attacked by three armed men of military appearance who broke into a house where they were about to film an interview. A week later, three armed men assaulted and beat up journalist Luis Angeles Laynes, political editor of the popular newspaper *Ojo*, in a Lima street; *Ojo* staffers had earlier received threatening phone calls.

While these attacks remained anonymous and the government disclaimed responsibility, it openly denounced other journalists and media proprietors who published unwelcome disclosures, and opened selective prosecutions against them for alleged tax debts. The main target was Baruch Ivcher Bronstein, an Israeli-born magnate and majority shareholder in Channel 2 television, the station which aired the explosive La Rosa interview. In the days following that broadcast, helicopters circled over the station, and police investigators arrived there to gather information about alleged import tax evasion. Captain Julio Salas, a police officer placed in charge of the customs investigation, later stated that a superior had told him the investigation was ordered by the SIN. When the intended harassment received adverse publicity, the government halted the investigation and publicly denied it had ever begun. Salas, who refused to comply with instructions to deny his role in the investigation, was threatened and intimidated by his superiors, and on two occasions, unknown assailants attacked his wife in the street. On May 23, the army issued a communiqué denouncing Ivcher, who had taken refuge in Miami, for allegedly trying to damage the armed forces' prestige. This was followed by a warrant for his arrest by the military justice authorities. The government then introduced an unexpected change in the immigration rules, warning naturalized Peruvians that they risked losing their citizenship if they engaged in treasonous behavior. On July 13 it revoked Ivcher's Peruvian nationality, citing alleged irregularities in his application for citizenship, which had been granted thirteen years before and never previously questioned. This action violated Peru's constitution (Article 2:21), which holds that no one may be stripped of his or her nationality, as well as international treaties ratified by Peru.

Minutes before the decree appeared in the official gazette, Ivcher's television station, Channel 2, broadcast the results of an investigation which purported to show that the SIN had tapped the phones of at least 197 businessmen, politicians, and public personalities, including Foreign Minister Francisco Tudela, as well as former United Nations secretary-general and opposition presidential candidate, Javier Prez de Cuellar. President Fujimori, Prime Minister Alberto Pandolfi, and the head of the SIN, Julio Salazar Monroe, all strenuously denied the report. They claimed that private individuals were responsible and could easily obtain the necessary eavesdropping equipment. Communications experts, however, indicated that the sale of electronic eavesdropping equipment was restricted to government agencies, while a television investigation revealed that the government of Peru had updated its electronic surveillance equipment in 1994.

By various legal means Fujimori's party, Change 90-New Majority (Cambio 90-Nueva Mayora, C90-NM) tried to weaken the critical function of autonomous constitutional bodies set up to safeguard individual rights and the rule of law. In May, C90-NM's parliamentary majority dismissed three members of the Constitutional Court after impeaching them for publishing a ruling that a law passed by Fujimori to enable him to stand for a second re-election in the year 2000 was inapplicable. Article 112 of the constitution does not permit a second re-election, but the impugned law had interpreted the article as excluding terms of office prior to the promulgation of the constitution in 1993. The impeachers argued that the court had no quorum for the ruling, but four of the seven judges on the court disagreed. The firings caused protests across the nation and provoked strong objections from the judiciary, the attorney general, the Office of the People's Defender (Defensor del Pueblo), and the Catholic Church, as well as concern by the Inter-American Commission on Human Rights. Prior to her dismissal, one of the judges, Delia Revoredo, found herself under investigation by a Callao court for the import of a car in a case which had long been closed, and she alleged that her home had been under surveillance.

Measures purported to reform the judiciary, which was drastically purged after Fujimori's coup in 1992, came under severe questioning from politicians, the public, and the judges themselves, as it became increasingly clear the goal was to tighten executive control over the court system. A poll conducted in August revealed that less than one in five members of the Lima population had any confidence in the judiciary, and judges themselves complained of insecurity after a wave of firings by the Executive Commission of the Judiciary, whose head, former navy Capt. Jos Dellepiane, was appointed in 1996 by the government to overhaul the courts. Five years after Fujimori's drastic intervention of the judiciary, 80 percent of Peru's judges still had only provisional status, and their lack of tenure made them notoriously vulnerable to pressure from the executive branch. The director of the Academy of the National Magistrates' Council (Consejo Nacional de la Magistratura, CNM), which is responsible for training judges, estimated that it would take three or four years for the CNM to fill all the vacant posts with permanent appointees. Meanwhile, the commissions set up in 1996 to coordinate the restructuring of the courts and the Public Ministry were criticized for inefficiency as well as being headed by loyal government appointees. Members of Congress from the government as well as the opposition made new proposals in August to restructure the reform process, including a controversial proposal to reduce the training requirements of new judges to speed up new appointments. As a result of Fujimori's intervention, the courts' traditional

inefficiency has been compounded by a growing subservience to the executive branch.

In a disturbing development which illustrated the above problems, conflicts between civilian courts and military tribunals over the applicability of constitutional guarantees such as writs of habeas corpus were resolved in favor of the military by the Supreme Court. When Attorney General Miguel Aljovn Swayne ordered legal action against the Superior Council of Military Justice (Consejo Superior de Justicia Militar, CSJM) for failing to comply with three separate habeas corpus writs issued by the Chamber of Public Law of the Lima appeals court, the CSJM's president threatened to open impeachment proceedings against Aljovn. Then the CSJM presented a disciplinary complaint against the Lima appeals court judges who had granted the habeas corpus. In June, a Supreme Court panel summarily relieved Judges Sergio Salas Villalobos, Elizabeth Roxana MacRae Thays, and Juan Cancio Castillo Velsquez of their duties on the appeals court. One of the cases it had been due to hear was an appeal for constitutional protection (*amparo*) by Baruch Ivcher against the decision depriving him of his Peruvian nationality.

The Supreme Court also dismissed the attorney general's accusation against the CSJM, arguing that the military justice authorities could disregard any habeas corpus which was "illegal." Instead, it ordered the three appellate judges prosecuted for breach of public duty (*prevaricato*). The panel which ruled on the case was composed of temporary judges without tenure, and who were therefore vulnerable to pressure from the military and the executive. On September 4, the Executive Commission of the Public Ministry decided not to order the prosecution of the three judges.

In July, then-Minister of the Interior Carlos Saucedo issued a shocking order that Judge Elba Greta Minaya Calle, of the 37th Penal Court of Lima, be prosecuted for terrorism and other crimes for granting a habeas corpus writ against the National Police. Due to a public outcry, the terrorism accusation was dropped, but disciplinary proceedings against Judge Minaya-widely respected for her independence and integrity-remain open at this writing.

Congress renewed the mandate of the adhoc commission established in 1996 to review cases of prisoners unjustly accused or sentenced for terrorism until February, 1988. By November President Fujimori had released 227 innocent prisoners on the recommendation of the commission, but hundreds more remained in jail. As of this writing, the government has refused to renew access of the International Committee of the Red Cross (ICRC) to maximum-security prisons, which it suspended during the hostage crisis. Visits by the ICRC, which does not publish its findings but communicates them privately to the government, have proven effective in reducing the incidence of ill-treatment, including torture and forcible disappearance, of detainees. The continued denial of ICRC access underlined the government's disregard for the rights of detainees accused of terrorism and treason. Prison conditions for high-security prisoners continued to be extremely harsh. In April and August, 161 high-security prisoners jailed for terrorist offenses were transferred to a new prison at Challapalco, located at more than 14,000 feet in the Peruvian Andes, where temperatures drop to twenty degrees below zero centigrade (four degrees below zero Fahrenheit). These conditions constituted a serious risk to health, and the remoteness of the site meant that the prisoners were virtually cut off from the outside world, violating international norms.

In June the government introduced new prison regulations for prisoners accused or convicted of "terrorist" crimes, which may ameliorate some of the worst features of the prison regime. Prisoners were to be allowed weekly, instead of monthly, visits from the families, and their children would be allowed to visit them every week, instead of every three months. Prison privileges were to be earned by good conduct, but new prisoners, regardless of the nature of their offense, still had to spend a year under the harshest regime, locked up in their cells and allowed out for only one hour a day.

The Right to Monitor

The Pro-Human Rights Association (Asociacion Pro-Derechos Humanos, APRODEH), which played a prominent role in bringing human rights violations to public attention, suffered harassment, including persistent surveillance and anonymous death threats. The threats coincided with APRODEH's assistance to the beleaguered judges and police captain Julio Salas. On August 14, APRODEH staff received five threatening phone calls asking about Judge Minaya, insulting them and threatening to make them "disappear". Later that afternoon a black Volkswagen followed Minaya's car when she visited APRODEH's Lima office. When APRODEH staff questioned the driver, he confirmed that he was following the judge. On September 4, a man turned up at the office claiming to bring a message in an envelope from Judge Minaya. The letter was an anonymous warning to APRODEH's director, Francisco Sobern, not to meddle in the case of police Cap. Julio Salas and accusing both Salas and Sobern of accepting a bribe of \$30,000 from Baruch Ivcher. "Stop meddling in what does not concern you, you have been warned, son of a bitch," the letter said. The same person left another letter in the home of Mara Jess Garca Snchez, Salas's companion, accusing Salas of treachery and threatening to kill him "like a dog." On the following day, Sobern, Mara Jess Garca, Salas's lawyer Dr. Miro Toledo, and Sofa Macher, executive secretary of Peru's respected nongovernmental human rights umbrella group, the National Coordinator of Human Rights (Coordinadora Nacional de Derechos Humanos, CNDH) held a press conference to denounce the threats. Two hours later, each of them received a threatening phone call from a woman who announced that she personally would kill Mara Jess Garca. The latter received three messages on her beeper from a person impersonating Sobern summoning her to an urgent meeting.

The Role of the International Community

United States

The United States ambassador in Lima, Dennis Jett, assumed a higher profile on human rights and civil liberties in 1997 than has been embassy practice in previous years, a gratifying step away from the policy of quiet diplomacy we have criticized in the past. Jett's timely interventions may have helped avoid a deteriorating human rights situation becoming much worse. On at least six occasions Jett spoke out on human rights issues, including torture, freedom of the press, due process in anti-terrorist trials, and judicial independence. On April 9, for example, Jett told reporters who questioned him on the La Rosa case that a prompt investigation of the torture could improve Peru's international image. One month later, military justice officials announced that four officers had received eight-year sentences by military courts, an unprecedentedly swift response. The ambassador described the dismissal of the three Constitutional Court judges as "definitely a step backwards in the process of consolidation of Peruvian democracy." On the Ivcher case, State Department spokesperson Nicholas Burns accused the government of depriving Ivcher of his Peruvian nationality for political reasons and pointed out that "this action raises fundamental questions about freedom of the press and of expression."

Though these interventions were poorly received by the Peruvian government, they set an important tone for Peru's relations with the United States, reminding Peruvian authorities that the U.S. would not be silent on human rights in exchange for cooperation in other spheres, such as economic policy and anti-narcotics efforts.

However, the United States' role in Peru was marred by a continuing ambiguity concerning its relationship with Vladimiro Montesinos, de facto head of the SIN. Montesinos, who is reported to have worked for the Central Intelligence Agency, is widely seen in Peru as enjoying Washington's support, a notion that the United States did nothing to dispel. Moreover, Washington reportedly maintains a covert assistance program with the SIN to combat drug trafficking. This apparent liaison with a unit deeply involved in anti-democratic activities undermines the impact of public statements made by Jett and the State Department.

European Union

The European Parliament issued a strong resolution on July 22 calling on the Fujimori government to reinstate the magistrates of the Constitutional Court who had been dismissed by the Congress; to guarantee freedom of expression; and to abolish the practice of torture.

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